

**Ravalli County Planning Board  
Meeting Minutes for July 5, 2006**

**7:00 p.m.**

**Hamilton Middle School Auditorium, 209 S. 5<sup>th</sup> Street, Hamilton, Montana**

**Public Hearing**

**Aspen Springs (Wesmont Builders/Developers, Inc.) Major Subdivision and Eight Variance Requests**

*This is a summary of the meeting, not a verbatim transcript. A CD of the meeting may be purchased from the Planning Department for \$5.00.*

**1. Call to order**

**Dan** called the meeting to order at 7:18 p.m.

**2. Roll Call (See Attachment A, Roll Call Sheet)**

**(A) Members**

Dale Brown (present)  
Ben Hillicoss (absent – excused)  
Dan Huls (present)  
JR Iman (present)  
Roger Linhart (absent – excused)  
Chip Pigman (present)  
Les Rutledge (present)  
Lori Schallenberger (present)  
Gary Zebrowski (present)

Park Board Representative: Bob Cron (absent – excused)

**(B) Staff**

Benjamin Howell  
Karen Hughes  
James McCubbin  
Renee Van Hoven  
Jennifer De Groot

**3. Approval of Minutes**

**Dan** asked if there were corrections or additions to the minutes from June 21, 2006. There were none. The minutes were approved.

**4. Amendments to the Agenda**

There were none.

**5. Correspondence**

**Dan** noted there were 50 or more pages of correspondence from the public.

6. **Disclosure of Possible/Perceived Conflicts**

**JR** said that his son works for WGM as a traffic engineer, but is not involved with the present subdivision.

**Dale** said that he currently did not have any contracts with Wesmont Builders/Developers, Inc., although he had worked with them in the past.

7. **Public Hearing**

(A) **Aspen Springs (Wesmont) Major Subdivision and Eight Variance Requests**

**Dan** asked audience members to raise their hands if they believed this subdivision would create adverse impacts relating to the subdivision criteria. He asked about adverse impacts on agriculture and about 20 people raised their hands. He asked about adverse impacts on agricultural water user facilities and about 40 people raised their hands. He asked about impacts on local services and about 200 people raised their hands. He asked about impacts on natural environment and about 150 people raised their hands. He asked about impacts on wildlife habitat and about 200 people raised their hands. He asked about impacts on public health and safety and about 200 people raised their hands. (Note: About 300 people attended the meeting.)

**Dan** asked for three-minute waivers to be turned in before the Public Hearing began. He asked people to state their names and where they live. He said he wanted to hear from Florence area people first and the time limit for public speakers is typically 3 minutes. He said he received 3-minute waiver requests from Steve Hall for an unspecified time, Candace Jerke for 30 minutes, Bill Swensen for 15 minutes, Sarah McMillan for 3 extra minutes, and Marilyn Owns Medicine for 10 minutes. (See Attachments B-F)

**Dale** motioned that all those who requested a waiver be given 15 minutes.

**Les** seconded the motion.

The Board voted unanimously to approve the motion. The Board discussed how long members of the public would be able to speak.

**Stuart Brandborg** asked that everyone in the public be able to speak for three minutes and requested a continuance of the meeting so all could be heard.

**Dan** asked the audience to address the six subdivision criteria and noted that Montana State Law set up the criteria.

**Chip** asked that testimony not be repeated.

**JR** motioned a meeting cut-off time of 11:00 p.m. and said that if there were more people wishing to speak, that the Board would consider a continuance.

**Gary** seconded the motion.

The Board voted unanimously to approve the motion.

(i) Staff Report on the Subdivision Proposal: **Renee Van Hoven** gave a PowerPoint presentation. She gave an overview of the proposal and stated Staff has six outstanding issues that need to be addressed before they can make a recommendation. She said the developer needs to create a road connection to the south, relocate lots on natural drainages and wildlife habitat, work with MDT to mitigate impacts on state-maintained intersections, identify and mitigate law enforcement impacts, create a bike and pedestrian pathway, and work on internal parks and trail systems. She noted that if these issues were addressed by the developer, Staff would most likely recommend approval of Variances 1, 3, 4, 5, and 6, and denial of Variances 2, 7, and 8. She entered the Staff Report into the record. (See Attachment G, Aspen Springs Staff Report, Attachment H, Amendment to the Aspen Springs Staff Report, Attachment I, Letter from James McCubbin, Attachments J – MM, Public Comments Received After the Staff Report but Prior to the Public Hearing, and Attachment NN, Letter from David Hurtt)

(ii) Three Minute Rule Waiver Requests (if any)

(See above)

(iii) Public Comment on the Subdivision Proposal and Variance Requests

(a) Applicant and the applicant's representatives

**Nick Kaufman**, WGM Group, Inc., noted that 77% of Ravalli County was owned by State or Federal Government. He showed a Sonoran Institute progression of houses in the County. He noted that although 636 homes seems like a lot, Aspen Springs will only add about 32 homes per year to the valley, which is just 10% of what the Board approves each year. He said it would be easier for the developer to design 393 one-acre tracts than to create a planned community. He asked how large the County wanted communities like Hamilton to become. He noted that the northern end of the County is growing and that Aspen Springs is Smart Growth. He explained research done by the developer to find the site. He noted that the point of the Aspen Springs commercial lots is not to compete with Florence, but to reduce vehicle trips. He noted that 42% of the area in Aspen Springs is open space. He discussed the road concerns, and said the developer has offered to pay pro-rata. He went through the six subdivision criteria and the effects Aspen Springs would have on each one. (1) Effects on Agriculture: He said that there are no prime farmland soils or farmland of statewide importance on the property, the lot is surrounded by residences and agriculture, and that smaller lots would reduce demand of housing on larger lots. (2) Effects on Agricultural water-user facilities: He noted that the property has no water rights. (3) Effects on local services: He said that the developer has offered to pay pro-rata on the roads. He said he met with Sheriff Hoffman about what is needed for the subdivision and he said there should be a full-time patrol to help on the north end of the County. The Sheriff said it would take five officers and five police cars for a north satellite office. Nick said that just giving the Sheriff money does not solve the problem because the County Commissioners control the County's budget. He said that the proposed subdivision would offer increased property tax to pay for the services it uses. He said the developer offered the Florence Rural Fire District land. He said the subdivision creates fewer roads to maintain because of its density. He said that the developer met with the former Florence-Carlton School Superintendent and he agreed to a \$150 per lot contribution. He said the current Florence-Carlton School

Superintendent is conducting an impact fee study through TischerBise and the developer wishes to wait until the study is completed to see what would be a fair donation to the schools. (4) Effects on the natural environment: He noted the subdivision design preserves open ridges and a timber draw. He noted a discrepancy between the wildlife biologist they hired which said two high ridges were important, and comments from Fish, Wildlife & Parks, which said that the area at the top of the draw was important. He noted that the subdivision includes storm water collectors and Level 2 sewage treatment facilities. He noted there were no riparian or wetland areas. He said that any disturbed sites would be re-vegetated and weed management would help the area. He said air pollution would be reduced because of the ratio of streets to homes and there will be dust mitigation during construction. (5) Effects on wildlife and wildlife habitat: He noted the preservation of open space and draws. He said that domestic animals would be controlled and that would limit the number of stray dogs and cats on the property. He said that if it is that important to the Board and public, the developer could remove the houses from the elk winter habitat area and see what land conservation groups might want to buy the land. (6) Effects on public health and safety: He noted that with the gift of land to the Florence Rural Fire District, water supply would be close in case of fires. He said that they will contribute toward road improvements and create setbacks from the high-pressure gas line.

(b) All other members of the public who wish to speak

**Steve Hall** asked why there was not a question and answer period from the developer. He asked if he could ask Nick Kaufman questions.

**Dan** said he should pose questions to the Board and they would ask the developer if necessary.

**Steve Hall** said that he does not understand the public hearing process and said he wants to cover the criteria which came up during the presentation. He acknowledged that high-density housing is a trend the County will have to deal with, but because of this project's magnitude, the public should be able to ask the developer questions.

**Dan** noted that the Board took significant questions at the plat evaluation.

**Steve Hall** asked how much of the 77% of public land in Bitterroot Valley is timber and how much is open land. He asked if the 33 phases would be built in 20 years or 10 years. He noted there were no restrictions for minimum build out time. He noted that the County is trying to preserve open space and infrastructure and asked what is wrong with development closer to existing homes and towns. He said that it does not seem easier to him to create one-acre lots. He asked what types of fees would be assessed to homeowners. He asked about road gradients. He said that the roads in Canyon Creek Village are too small and suggested that if the speed limit is only 25 mph, the roads are problematic. He said that he was not worried about his backyard, but about the County and his friends. He said that WGM and Wesmont were fighting impact fees. He said that the approximate cost of impact fees per home was \$14,441. He noted that he spoke with County Attorney George Corn, who said it takes six years to get a home on full taxation and the first two years go to the State of

Montana. He asked how the developer was going to pay for the infrastructure and noted that impact fees would help. He said he liked that the subdivision controlled noxious weeds and noted that only homeowners take care of the weeds. He said that particulate is not as big of an issue as vehicle emissions created from 671 homes with two vehicles apiece. He said he has many photos of deer in the area and knows that there are elk in the area between Miller Creek & Eight Mile. He said he did not understand the road contribution the developer is proposing.

**Candi Jerke** said she had a petition against Aspen Springs and gave it to Staff. (See Attachment OO, Petition in Opposition to Proposed Aspen Springs Development) She said that the Florence Coalition Against Aspen Springs (FCAAS) is sure the subdivision will have negative impacts on the water table, wildlife, schools, and public health and safety. She said that taxpayers will have to pick up the cost of improving roads and schools and providing fire and police protection. She said that since the subdivision constitutes a town, it should provide those services. She said that she disagrees with some of the Staff Report, but agrees with other items, such as light restrictions. She said that the northeast area of the subdivision should not have housing because of the elk habitat. She said she visited the USDA website to see what types of soils were on the property and noted that the new soil survey said all soils were severe for road construction and that only a third of the site had decent soils for building. She said that the number of houses was ridiculous because the area is too steep. She said that the slope maps provided by WGM were skewed and most of the slopes are closer to a 15% grade. She agreed with some of the Staff recommendations on covenants, but said that Mr. Ashby still has total control over the covenants and Homeowner's Association, which would have no influence if he wanted to start a RSID. She said that at that point, affordable housing is a moot point. She said one question that irritated her was why there could not be 79 homes instead of 393. She said that WGM's numbers in the storm drainage report do not match up. She asked if part of Lower Woodchuck Road would stay gravel. She said that none of the variances meet all five of the variance criteria. She read part of the variance report from the Staff Report. (See Attachment G, Aspen Springs Staff Report) She said there was no excuse for the variances and that they are ridiculous. She noted that she was an appraiser and she understood the cost of development. She read from the report which she gave to the Planning Board regarding growth costs. (See Attachment M, Cost of Growth Report) She noted how much each public area would receive from estimated property taxes and said that the County will not get money back through property taxes. She said that Aspen Springs' economic report is exaggerated. She said that the County was in a state of emergency and that the County Commissioners declared that with the big box-store resolution. She said that County Attorney George Corn said the County was in a state of emergency in his memo. She asked how the Board could approve a subdivision of that size with no idea of how it would affect the community. She said she did not believe the Board was looking at the whole picture. She said Aspen Springs was not what the people want. She said that although nothing is wrong with Smart Growth, she has visited Canyon Creek Village and does not want to go back.

(Although he requested a three-minute waiver, **Bill Swensen** was not present.)

**Marilyn Owns Medicine** asked where it is written that the public can only discuss the six criteria. She recommended that the public speak their minds. She said that developers do not represent Ravalli County. She said that the people of Ravalli County want 5, 10, or 20-acre parcels. She said almost all of the people in the room own more than one acre because that is what they want and the Planning Board represents them. She said that the subdivision in Boise after which Aspen Springs was modeled is very different from Aspen Springs. She said that Hidden Springs was built near a metropolitan area, where proper roads were already in place. She noted that Hidden Springs built a charter school to educate students through the ninth grade. She said Hidden Springs has open space built in that is not in septic drain fields. She said that Smart Growth is growth next to municipal areas so it increases the tax base. She said the developer did not have a permit from DEQ. She said that the subdivision has been denied on their water system, non-degradation application, and their septic system. She said the only permit they have received from DEQ was one to do test wells, and the developer is about to fail that. She said there is not enough water there. She noted that if there is not water on the site, the developer will have to redesign the subdivision. She said that Smart Growth does not promote traffic, but this subdivision is creating a municipality in the middle of nowhere. She said that walking, hiking, or biking out of the subdivision is dangerous territory and people today cannot ride their bikes to downtown Florence. She asked what was going to be on the seven commercial units on the site. She said that residents will have to go to town for everything. She said there is no guarantee that the houses will be affordable. She said that \$550 per year is not affordable for water costs. She noted that municipal costs in Stevensville and Hamilton are lower. She noted there would be other fees for common area maintenance, internal road maintenance, and a RSID. She said that homeowners will have to pay for a SID and the money will go in the developer's pocket. She said that since the County has no zoning or growth plan, she has no idea if Ravalli County residents need this housing. She said that Missoula County does need it and residents of Aspen Springs will spend money in Missoula, work in Missoula, and commute to Missoula. She said that there is nowhere to buy jeans in Florence. She said that people will not drive to Hamilton and construction materials and laborers will not come from Ravalli County either. She said that there will be 5,000 additional cars on the roads. She said she did not see in any report how many human lives will be lost, which is a public safety issue. She noted that there is a high-pressure natural gas pipeline which is located near her property with a potential impact range of 142 feet, which would cause significant property damage and take human lives. She asked why the developer chose to go under the current regulations to be able to build a house within 25 feet of the gas line. She said that the developer wants to build roads and encourage hiking over the pipeline. She said that the developer should have to stay with the rules as they were when he submitted the application. She said that developers should not be able to pick and choose which rules they want to apply. She said she was concerned that Staff recommended approval of the variance for lot size reduction because the regulations prohibit granting a variance for density. She read from the Ravalli County Subdivision Regulations Section 8-1-8. She said it was disrespectful of the developer to ask the Board to do things it is not authorized to do. She said that the supporting documents were all prepared by WGM and most do not identify the professional person who created them. She said that the elk and mule deer winter range is a very specific impact, that those animals cannot dig

through the deep snow, and that they need the winter range. She said that even if the developer removes the houses from the northeast, the animals will not come to the winter range because of all the other houses created in the area.

**Sarah McMillan** said she was an attorney representing FCAAS and Bitterrooters for Planning. She said she sent a memo to George Corn regarding cumulative impacts. She said that the Board should consider countywide cumulative impacts. She said Staff recommended a variance from the phasing regulation so they could consider the entire subdivision in cumulative impacts. She noted the Board has to consider construction impacts 20 years from now. She said that the phasing regulation mentions 2 phases over 4 years, not 33 phases over 20 years. She said that the variance is actually several variances on top of each other. She read Subdivision Regulation 8-1-11, which states that variances expire after 30 months after the date of approval unless the final plat is filed. She said the variance would expire before the phasing is completed. She said that it is unprecedented to approve development that will occur in 20 years. She noted that the Board does not know what the regulations will be in 20 years and approval will preclude the Planning Board in 20 years from doing its job. She said that the County Commissioners recognized the emergency situation of growth in the area and they plan to enact zoning regulations in the next two years. She said that proposing a 700-home subdivision now shows that the developer is trying to squeak in under current zoning practices. She said that variances are for undue hardship and strict compliance. She said the developer was way out of bounds of a variance and there is no undue hardship. She said that the developer does not know for sure that people will buy his houses and he cannot ask for approval of a subdivision when there is no guarantee that it will be built out. She concluded by stating that the phasing variance is out of bounds and should be denied.

**Steve Hall** said he attended a meeting at the Florence-Carlton School hosted by the developer. He said it was an effort made by WGM to learn what is necessary to avoid mitigating the concerns of the neighborhood. He said he did not move to an area to create challenges and does not want to challenge the community. He said that identifying him and his group as obstructionists or NIMBYs (Not In My BackYarders) is a gross injustice. He said that Wesmont has shown by how much money they make that they do not put potential homebuyers in a place of respect. He said that lawsuits have been settled with Wesmont as the defendant and plaintiffs are not allowed to reveal their names. He noted that further litigation is pending against Wesmont regarding building codes. He said he submitted several photographs taken in May 2006 of houses built by Wesmont with exterior problems, which he said is not unique to this development. He said that haste is the key factor in the development. He noted that the 62 photographs do not cover everything. He said that there is so much traffic on Highway 93 that people call it the Bitterroot 500. He discussed road speeds and gradients. He said that the subdivision is full of dangerous, low-speed slopes and he recommended research on the topic.

**Chip** suggested that since Steve had already submitted the report he was reading to the Board, perhaps he could give up some of his speaking time to allow other members of the public time to speak.

**Steve Hall** said that people do not have time to do research. He said that the subdivision will not be an overnight success or failure. He noted that once the Board opens the gate, they could be dealing with 5,000 home subdivisions. He said that the public needs to hear the facts and he worked to provide this information.

**James McCubbin** said that the Board does not have to hear repetitive testimony and noted they could ask Steve Hall to quit speaking. The Board allowed him to continue.

**Steve Hall** discussed road composition and noted there were construction flaws. He said that taxpayers will end up paying for increased road use. He noted there will be a 50% increase of traffic on Eastside Highway. He listed a few cases of casualties and injuries on Eastside Highway and noted that he wants the road improved. He said that the County only has 20 employees to maintain 550 miles of road. He also discussed the impacts to US Highway 93 and noted there was no mitigation for US Highway 93 or Eastside Highway. (See Attachment PP, Brochure on Hidden Springs)

**Barbara Evans** said she was a Commissioner in Missoula County and that she was pleased with the work that Wesmont Builders did by providing middle-income housing in Canyon Creek Village. She said the housing was impressive and she was pleased with Perry's meticulous details. She was so pleased, she had Perry Ashby construct an addition on her own home and it has become the highlight of her house. She said that without Canyon Creek Village, many people in Missoula would not be able to own a home. She said she had never heard a complaint against Perry Ashby and the homes have contributed to the workforce and tax base in Missoula County and the State of Montana. She said that she believes Wesmont's development was one of the reason's DirecTV chose to locate in Missoula. (See Attachment QQ, Letter from Barbara Evans)

**Scott Hollenbeck** said he was a real estate agent with Properties 2000 in Missoula and had been in real estate for 23 years. He noted that he picks his clients carefully. He said there were problems with Canyon Creek Village, like with every new subdivision. He said there is both a Homeowner's Association and Board of Directors in Canyon Creek Village. He noted that the subdivision sold 260 homes in the last four years and there has been an excess of 60 resales since the original homeowners bought their houses. He said that Wesmont buys locally, banks locally, will add jobs to Ravalli County, and will also benefit Missoula County. He said that Canyon Creek Village was an affordable housing project, but this project is considered to be different, with an array of housing. He noted that does not mean that the less expensive houses will be sub-standard. He noted that he had Wesmont construct a home for him 18 months ago. He said that if the Board asks people who live in one of Wesmont's projects, they will find a high percentage of people are happy with homes. He then read excerpts from a letter written by Sandy Pomeroy, the previous president of the Canyon Creek Village Homeowner's Association. (See Attachment EE, Letter from Sandy Pomeroy)

**Angela Zielinski** said she was an attorney with Sullivan, Tabaracci & Rhoades, PC in Missoula. She said that she bought her first home in Canyon Creek Village two years ago. She said that before Canyon Creek Village, she could



not afford to purchase a home, but her rent was the same as her current mortgage payment. She said if Wesmont had not created Canyon Creek Village, she would still be renting and paying the same as a mortgage payment. She noted that many other people would say the same. She said that she enjoys a sense of community and that the subdivision is well-kept and her neighbors are friendly. She said the subdivision is child-friendly and that her daughter rides her bike around it. She said she was a proponent of Aspen Springs. She commented that it is hard for working families to afford quality homes and if built, many families will be able to stay in the area. She said that Wesmont will be responsible, there will be minimal impacts to agriculture, and their development will alleviate urban sprawl. She said that Wesmont will study and mitigate issues with the Florence-Carlton School District, the Florence Rural Fire District, and effects on the natural environment and wildlife. She noted that most of the property will be open space and parks. She urged approval of the subdivision.

A lady in the audience contended that the first speakers did not address the six subdivision criteria.

**Dan** responded that the Board will be taking public comment and has allowed latitude of speech from the six criteria. He said that the rest of the public may also have that latitude, but he would prefer that the public address the six criteria.

**Kris Hollenbeck** said she was a real estate agent with Properties 2000 in Missoula. She said that she purchased her first home in Canyon Creek Village and found it affordable, brand new, and energy-efficient. She said her house has an energy-efficient furnace, siding, 30-year shingles, and came with a one-year limited warranty. She said her subdivision has sidewalks, curbs, gutters, and tree-lined streets. She said she has a sense of pride of ownership and urged the Board to approve Aspen Springs.

**Terry Wahl** said he lives southeast of the proposed subdivision. He said he lived in Missoula for 25 years, but moved to Ravalli County to get away from urban sprawl. He said there is another subdivision proposed northeast of his subdivision. He said there was no infrastructure to support the system and no sewer or water system. He also stated that there was no proper transportation system and that Lower Woodchuck Road has no shoulders in case of an accident or flat tire. He said the traffic creates a safety issue for kids and for walking or riding horses. He said he was not against the development, but asked the Board to be smart about it and use common sense.

**Stacy Richard** said she lives in Missoula and purchased one of first homes in Canyon Creek Village. She said she sold the home afterwards and was able to go to school and get her degree. She said the road size in Canyon Creek Village promoted slower traffic and residents could let their kids play in the roads. She said she saw fire engines, police cars, and ambulances that were able to travel on the roads. She observed that change is kind of scary and that we have so much diversity. She quoted Harold Wilson: "He who rejects change is the architect of decay. The only human institution which rejects progress is the cemetery."

**Don Kechely** said he moved to Ravalli County in 1991 and has seen a lot of growth. He said he got out of the Navy in 1972 and then moved to Flathead Valley. He said he was raised in Colorado and they put in a ski area at Breckenridge. He affirmed that wherever you live, there will be growth. He stated that in 2000, the census for Ravalli County was 40,000 and they are forecasting that the number will double in the next 20 years. He said that growth will happen, but for it to occur, it must be planned. He said that Aspen Springs is planned and will handle some of the influx of people moving here. He noted that only 32 homes will be built a year compared to the 300-500 homes that will need to be constructed every year to handle people moving in. He said Aspen Springs will keep 160 acres as open space and the homes will be affordable, allowing people to put in roots. He said that construction will put money back in the economy. He said every dollar spent causes \$7 to be generated in the economy. He said that the first year alone Aspen Springs will raise the tax base by \$215,000, and said that over 20 years, it will generate 3.6 million dollars. He alleged that the development will pay for itself and is good for Ravalli County. He noted that he was in favor of the proposed subdivision.

**Ryan Guerra** said he has worked for Perry & Wesmont for 5 years and is impressed with their professionalism and construction history. He said an important thing to think about it is the people who will be buying the homes. He said he deals with people who live in the subdivisions and can see how happy they are to own a home. He noted that everyone has to start out somewhere and the older crowd had to start out somewhere as well. He said that having a planned subdivision will draw a younger crowd.

**Dale** said that the Board invited John McGee, the Florence-Carlton School Superintendent to speak and asked him if he had any comments.

**John McGee**, the Florence-Carlton School District Superintendent, extended an invitation to Perry Ashby and the Board to continue their meeting at the school in Florence. He said he sees a lot of students coming in the doors of the school and 600 homes in the District will generate more students. He said he has seen estimates of 17 students at full build-out all the way up to 500 students. He said a conservative estimate would be .4 to .5 students per house, averaging 200 to 300 students coming in to the District at full build-out. He said although he hears a lot about the need for affordable housing, the District is overcrowded and will have to build more buildings to be able to take on more students. He said that with any growth in the District, they will have to build more facilities and not doing so would destroy the quality of life for a young person. He noted that he has had opportunities to visit with the people in his District through his job and Boy Scouts. He said he has heard pleas not to increase taxes. He said he is working on trust with the people in his District. He said he realizes the County is at a crossroads. He said the question is, is it quality of life or affordable housing? He asked if the subdivision will end up impacting the District and then other people will have to pay tax increases, including the elderly and others who cannot afford the taxes. He said the District is studying impact fees right now and knows it has a high bar to meet because all three commissioners in Ravalli County and Missoula County have to agree that the impact fees are appropriate and fair. He said that before he became superintendent, the District agreed to accept \$150 per lot from the developer. He said the real costs are about \$5400 per student. He noted that Perry has been gracious to say he wants to see the

impact fees and TischlerBise will provide real numbers of impacts. He said Perry will work with the District to identify and mitigate the impacts. He noted that Florence has a lot to offer anyone who wants to live there, but the area will be compromised if developments do not work to mitigate the issues.

**Stan Duckbill** said he works at Ready Mix Concrete and lives in Missoula. He said he has lived in his home for 17 years and has seen lots of growth. He said he has seen Canyon Creek Village as an opportunity for homebuyers. He noted that his company has done many quality developments in Missoula & Ravalli Counties and that developments allow for growth. He said that the proposed development provides adequate infrastructure for growth and affordability. He said that all businesses depend on solid, planned development for growth. He said he is in support of the development.

**Gary Haas** said he runs two businesses in Florence and owns two homes there as well. He said that the development does not fit in with the character of the valley. He admitted that some people said they bought affordable houses, but he does not feel that these houses will be affordable for many people. He said that the subdivision packs people in. He cited a bumper sticker which says: "Pray for me, I drive on 93." He noted that on a drive from Missoula to the Bitterroot Valley, he was going 65 mph and had 72 people pass him. He said he hit a deer and the Highway Patrol said it would take two to three hours to get to him. He noted that he was a wildlife biologist and had done some elk research. He said that the elk will not stay up there with all the houses around. He said he was on his second home and had it built by a small, local builder. He said that although he believes in growth and housing, there are several more proposals in the area that are too big and go against the character of the valley. He noted that the Planning Board represents them. He said that he does not make a lot of money, but wants to keep the valley the way that it is and wants to see some responsible growth.

**Dana Bosse** said he lives in Florence in a 5-acre subdivision. He noted his first reaction to the subdivision was: "This is opposite of why I live here." He said he hears people talking about an emergency. He contended that there is not an emergency, but a lack of zoning and long-term planning. He said this subdivision is an opportunity for everyone to become aware of the need for planning. He said he moved here in 1998, but was raised in a small Florida town and watched the explosion of growth. He said he watched the government overreact and under react. He said he felt that a subdivision like Aspen Springs only exists because there is demand for it. He commented that the demand will not go away whether it is approved or not. He said if there are not 600 buyers, it will not be built because it will not be economically feasible. He said the demand will cause people to buy houses in other places, perhaps 3 or 4-acre lots. He said standard septic tanks with wells and no long-term monitoring are causing a crisis. He said that where he comes from, the federal government makes developers stop until they put in a sewer system. He remarked that communities like Aspen Springs are not what people love about Montana, but they are necessary. He conceded that at least it concentrates houses in one area and has some sewer supervision. He said he is not opposed to the subdivision and it is better than what else could happen.

**Ashley Bosse** said she lives in Missoula but grew up in Florence. She said she wants to be a homeowner. She said she believes in a well-planned community and wants affordable housing.

**Kathleen Driscoll** asked the Board to consider costs in the future for the County. She said that she has been listening to the County Commissioners at budget hearings and says that now Missoula County has mitigation fees to receive catch-up costs whereas Ravalli County does not. She said that Missoula County has planning and there are costs in Missoula that drive developers to create homes down in Ravalli County, while keeping jobs in Missoula. She said that she hopes they will have money to work with next year. She said that the County is going to be gut-punched by large subdivisions. She said that they are not taking care of infrastructure right now. She noted that people do not want to pay more taxes. She also said that if the subdivision is approved, there will be less and less quality services smeared over larger portion of people.

**Dale Bird** said he lives in the town of Stevensville. He noted that the fundamental of American democracy is that its wisdom lies in its people. He said that he has heard wisdom at the meeting tonight. He noted that the meeting should have been in Florence. He said that the people want to be able to trust the public process. He observed that the County is dealing with an emergency. He likened mega-developments in Ravalli County to an invasion by a foreign entity who brought Weapons of Mass Destruction with them. He said that the staff did not present impacts on the water situation or social impacts. He stated that the highway system was already overtaxed. He suggested that impact costs per unit should be \$24,000 to \$25,000. He noted they will have to do dust control over 20 years of the project. He suggested that they study the proposal in the context of an emergency and convince the County Commissioners to establish a moratorium on development. He said that like the Americans at the Boston Tea Party, Bitterrooters today do not want things jammed down their throats.

**James McCubbin** asked the public not to insult the Board. He noted that there were vacancies on the Board.

**Barbara Kitchens** said she is a Victor resident and comes from multiple generations of Bitterroot residents. She said she was forced to leave the area because there were no jobs here and it took her 25 years to come home. She said when she moved back, she brought her adult children, none of whom could find jobs, and only one could buy a home. She commended Perry Ashby for including more than 40% of the subdivision as open space, for addressing water concerns, water restoration, community wells, and for providing long-term preservation. She commended his architects for providing public safety and addressing water, septic, and sewer issues. She thanked Perry for being willing to participate in Ravalli County. She said that the meeting tonight upset her. She said she was not raised to allow human criticism and ridicule. She said that if the other public did not care to ask about the subdivision in the past year and a half, they should not do so tonight. She noted that it was insulting that people used land and heritage for private agendas and asked for approval of the subdivision.

**Doug Soehren** said he lives in Hamilton and has lived here most of his life. He stated that although he is retired, he still works. He said one thing he does not like about the subdivision is that he will end up having to subsidize it. He explained that property taxes have tripled since he bought his home. He said that the subdivision will create an increase in demand for services. He noted that he has not asked for any additional services or for an increase in road or school services. He said that he appreciates the fact that people could own their own home. He suggested that people who like to live in the city should live in the city. He noted that Ravalli County is not a city and people who live here do not want to live in the city. He expressed hope that the Board would not approve the subdivision. He said that the subdivision would negatively impact his safety. He said that although the consultant said the subdivision will not impact agriculture, it will take the land out of production so it cannot be used for agriculture later. He stated that all six criteria are affected negatively. He said he will have to pay for the subdivision, but will not benefit from extra taxes. He asked why the Board and County should bend over backwards by allowing the variances.

**Steve Hall** asked if the hydrologist for FCAAS could speak tonight. The Board said he could get in line and wait his turn to speak.

**Scott Bloom** stated he was from Stevensville and also works in the construction industry. He said that he does not want to debate the developer's credentials and thinks there is a need for a planned development such as this. He noted that growth has come to the valley, but requested that the Board look at the big picture. He said that the subdivision was not bad in itself, but questioned whether or not it was in an inappropriate location. He said that the County could have 25 new towns of this size that are disconnected from existing infrastructure.

**Steve Wilcox** (inaudible) from Stevensville said he agrees that the Board needs to look at the big picture. He observed that the Board has a subcommittee working on the northern end of the valley on density mapping. He agreed that there needs to be Smart Growth, but questioned if there could be Smart Growth in the location of the proposed subdivision. He noted that there are places where there should be high density, but there are also places where 1 to 5-acre parcels are appropriate and where there should be places for even lower density. He said there is a lot of research available on fish and the elk winter range and said that making a decision now is putting the cart before the horse. He noted the County does not have impact fees or building permits. He asked the Board to consider the folks that just got into their homes or folks trying to stay there. He said it was not fair to pass on those costs to the new homeowners. He said that the County will need to increase Sheriff's protection. He said that even with impact fees, the other County residents will still subsidize some portion of growth. He asked the Board to make it a fair portion. He said that he is a biologist and is worried about the faulty process for water approval. He said that information is not submitted to DEQ prior to the subdivision application and he asked the Board to consider that.

**Bill Ostheimer** said he was a Board Member of the River View Orchards Homeowner's Association south of the subdivision. He noted that Sheriff Hoffman was having a hard time keeping the north end of the valley staffed

because of current budget constraints. He said that in 2005, 911 received 13,000 Florence calls and said that the 911 staff will get more irritated with 600 new homes. He said that the problem is now. He said that the Deputy County Attorney can say whether or not the Board can legally say stop or wait. He commented that the County has not had a subdivision of this size before and noted that there were several down the pipe bigger than this one. He said that he has neighbors who live on the road where Wesmont wants to punch a road through. He said he understands that there are concerns about getting out of the neighborhood, but asked the Board not to put a highway in someone's backyard.

**Shaen McElravy** said he was from Stevensville and asked the Board if they had a County hydrologist to review the water and sewer material. He said that someone has to pay DEQ to review material. He said he picked up about a half dozen errors in Wesmont's submittal to the DEQ. He said that one of the requirements is that the developer has to file an environmental impact statement and the developer has to pay for it. He asked why the DEQ had not permitted Aspen Springs and then noted that 300 septic systems in a square mile are considered hazardous. He said that Type 2 systems are about 10% better than standard systems. He remarked that the MSU Extension Office said that there was about a 5-7% evaporation rate. He noted that if houses are built on a hill, the sewage goes downhill. He said that waste will accumulate in toxic levels and the Eight Mile area is already at capacity. He said the developer does not need to build houses closer than 142 feet to the high-pressure natural gas line. (See Attachment RR, Aspen Springs Proposed Development)

**Penny Howe** stated she was from Stevensville. She recommended that if the public was unhappy with the public process, they go to the state legislature. She commended Perry for creating a development with a wastewater treatment system. She noted that the EPA will require the development to put the water they use back in the system. She said she believes Aspen Springs is a planned, pretty community. She said that some of the existing houses in the area do not look very nice. She noted that since today's society requires two working people, it is hard for them to keep up five acres. She noted that it is easier for people to upkeep yards on smaller properties.

**Inaudible** said that he had to place house numbers on his house because they were not placed on there when he purchased his home. He said that the Florence- Carlton School District cannot get a school bond passed because there are so many retired people in the Valley, who do not believe they should pay for services they do not use. He said that if Aspen Springs is approved, the subdivision will welcome new blood and give the Valley a future. He said that the Sheriff could put in a substation and the Fire Department has been talking about building another station in the Eight Mile area for years. He stated that Aspen Springs is the future for Florence and the north end of the valley.

**Inaudible** said she lives in Missoula and is an owner/manager at a Title company. She said that she has worked with Perry in the past and likes how his subdivisions create a place for young people to get into a home. She said she was in favor of Perry Ashby and the subdivision.

**Clint Brown** said he lives in Corvallis. He noted that he has lived in the County for over a decade. He said he has worked as a consulting hydrologist in the Pacific Northwest and all over the world. He said that he has a lot of experience in restoration and know what problems look like. He said that since more than 75% of the County is government-owned, and much of the rest of the land is governed by floodplain and municipalities, it is hard to locate land for this type of development. He said that the most recent Subdivision Regulations encourage cluster development, an idea he heard about years ago and liked, but did not think would go over well in Montana. He thanked the engineers and Perry for going out on a limb. He said that some of the things he heard regarding natural resources do not have scientific merit. He noted that the DNRC has experts on the state level to deal with water issues. He also noted that the drainages were ephemeral, with no fisheries in them. He urged the Board to endorse the project.

**Larry Jones** said he lives in Stevensville and is Secretary and Treasurer of his Homeowner's Association. He said nearly all of the members are opposed to the subdivision and referred to the reasons mentioned tonight and those on the FCAAS website. He said he disliked the density proposed, noting it might be acceptable near a city, with infrastructure, spare water, and fire crews, but not at Eight Mile. He said the subdivision is a bad fit for the area and starts a bad precedent. He said he and his neighbors will have to pay for the development for the next 20 years. He asked the Board to just say "No." He asked the Board to send the developer back to the drawing board and make him keep with the spirit of the Bitterroot Valley.

**Lee Foss** said he lives in Hamilton. He said he was on the Planning Board when they dropped the Growth Policy plan. He remarked that since 1999, the County Commissioners have spent hundreds of thousands of dollars trying to write a new one. He said he had listened to a lot of growth plan meetings. He recommended that the County needs cluster developments. He commented that the Chairman and Co-Chairman of the Planning Board in the early 2000s requested planned, clustered developments and even had drawings similar to the Aspen Springs plan. He noted that the County is now trying to put up a bond to create even more open space even though 85% of the County is owned by government, restricted by the government, zoned, or under covenants. He said that in the 1970s he worked for Ravalli County Electric Co-op. He asked if the Board had rejected the subdivisions proposed in the 1970s, where would those people live today. He observed that in 1970 the Co-op was told there would be 100,000 people in the County by 2000. He noted it did not happen. He explained that the developer is willing to gamble to bring clustered development plus donate to the Fire Department and leave 160 acres of open space. He said now the Board has a chance to approve a subdivision they have been asking for.

**Leo Hansen** said he lives in Florence and has lived here since 1953. He said that after listening to testimony, he has changed what he wanted to say. He noted that he would much rather see high-density housing than 5-acre weed patches. He said that he developed a subdivision with 1-acre lots and those will turn into weed patches. He said that maybe people moving to the Valley are coming from a city and want to live in that kind of environment. He said that if the developer can fit more people in a well-planned subdivision, then he should,

although he wants to see the lots a little bigger. He acknowledged that he has watched the County grow and noted that many people are turning commercial farmland into 5-acre lots, which will only produce enough room for one cow or one horse. He said after people started cutting up agricultural land, land prices started to increase. He explained that he has two kids in college and he cannot afford to buy them a lot or subdivide his land. He recommended approving the subdivision and letting people move up from there.

**Steven Manning** said he lives in Florence. He noted that he has an outstanding business relationship with Wesmont. He said he believed that Wesmont was part of the solution.

**Mike Wilcott** said he has had a working relationship with Wesmont since they started. He said that the developer is proposing a smart use of a small section of land and asked how it could be better used. He noted that a cluster development here and there will not hurt the valley. He said that he has lived here for 35 years and has seen lot of changes; he recommended approval of the subdivision.

**Howard Newman** said he was a private consulting hydrologist hired by the FCAAS. He said he has a range of experience in surface water hydrology, snow hydrology, treatments, and pre- and post-harvesting. He said that some people say the subdivision is well-planned, but if he had to pick a particular place where the water could not support an area, this is the place he would pick. He said that he worked with WGM before and one of his pet peeves was that they built on prime agricultural land in Missoula and they did not want to build on hillsides. He said that homes built on hills have better air movement, making it easier to heat and cool homes. He noted that the only reason the land was not being used for agriculture was that the rancher did not have water. He said that some wells in the Eight Mile Creek area are diverting surface water to have water. He noted that 640 lots will require wells and that amount of water will not be available. He remarked that on WGM's map, it shows the direction of non-degradation analysis is to the Bitterroot River. He said that on other groundwater maps, the water from drain fields will flow southwest into Eight Mile creek. He said that the lower the precipitation and groundwater recharge, the higher the nitrate sensitivity. He said that if they pull water from the ground, running 50-60 ppm of nitrate around 24-30 recirculating sand filters it will produce 20mg of nitrate and very little groundwater. He said that that amount is cause for concern. He asked the Board to test wells for a long period of time and noted WGM's hydrologist has not been around to speak.

**Nick Kaufman** said he asked Jason Rice to give his place in line to the consulting hydrologist on the project so he could answer questions. The Board said that the hydrologist could be heard at the next meeting.

**Sonia Dallapiazza** said she lives in Florence and will have to wait on Eastside Highway for all the traffic in the area. She said that there are just a few people on the Board making a decision that will have a big effect on her life. She said she does not care what happens to her in 20 years because she will not be here, but she does worry about her grandkids. She asked the Board to get something in writing and firm to make sure that the parks are dedicated. She



said if that was not done, the County will be sitting with a subdivision with nothing special in it.

**Jason Rice** said he is a land-use consultant from Lolo. He said that the developer is asking for preliminary plat approval, which comes with many conditions. He explained that if the conditions are not met, the subdivision does not get filed. He said that the project has many, many lots. He said that the developer cannot expect high absorption rates to meet phasing requirements. He said that there is not a workforce in Western Montana that can build that much infrastructure in four years. He urged the Board to consider ideas out of the box. He said that if the County develops in a haphazard manner they may end up with a mess. He said that many people tonight indicated that the creation of 30 lots a year will create a catastrophe, although the Board has approved 300-500 lots per year recently. He said that the subdivision is not something that is dropping from the sky. He asserted that it will be planned out and the infrastructure will be provided in time.

**Bill McRoy** said he understands the dynamics of 5-acre lots. He noted that not everyone in favor of the subdivision will make money off of it and indicated that the other side should receive fair treatment. He remarked that some people were surprised that there would be proponents and opponents. He recommended having another meeting in Florence.

**Jeff Crouch** said he had no financial ties to the subdivision, but was an architect who cares about growth issues. He said growth is the number one issue Western Montanans have to face. He said he was a relative newcomer to the state, having lived here 13 years. He said now that he is here, he wishes he could put a seal around the state to keep people out. He said he knew the County was growing and will continue to grow and he is in favor of the development. He said that the proposal does a better job of preserving open space and wildlife habitat, and is a better way to go than what the County has seen over the past years. He said that higher density is the key to preserving community, neighborhoods, and open space. He also noted that he was a proponent of lower-income housing. He suggested that dealing with big, difficult development is much better than letting piece-meal development go. He said he believed that well thought-out development was a much better approach to the future.

**Dan** noted it was 11:00 p.m. and asked the Board if they wanted to hear the last four people in line.

**JR** recommended letting them speak and also letting WGM's consulting hydrologist have a turn.

**Curtis Cook** said he was born in the Bitterroot Valley 90 years ago last Wednesday. He said he had a law office here and still practices. He said that while working on another subdivision, he questioned Staff and the County Commissioners about water and sanitation facilities. He said they answered that the DEQ in Helena had control over that. He noted that nothing was done regarding water and sanitation. He added that when the time came, he called the DEQ and was told they were going to go ahead and approve it. He said that the DEQ did not have a copy of the preliminary plat, but only had what the

developer sent in. He asked why the Board did not send in the preliminary plat and environmental statements to DEQ. He said that if this Board does not review the sanitation and water at least they could send the info to the DEQ that has been submitted for consideration in application. He said that the Board is not giving any consideration to safety and health matters.

**Glenn Kinsley** said he lives in Stevensville and has heard a lot of testimony for and against the subdivision. He remarked that he wants his five acres and does not want his neighbors so close. He said he is promoting a petition to limit development from one house per two acres, even though that is too dense for him. He remarked that a lot of money has been spent promoting the subdivision, but asserted that the Board does not have professional staff to evaluate it. He recommended that the Board deny the subdivision and encourage the County Commissioners to approve a moratorium on subdivisions.

**Norm Hagen** said he owns 40 acres near the property and would like to discuss the wildlife impact. He said that Renee used a photograph of three elk in her presentation. He questioned where the picture was taken. He said that the lack of snow in the picture suggests that the subdivision is outside of the wildlife winter range. He said that if they turn down the development, the future of his 40 acres is in question. He said that Steve Hall should be applauded for his work, but asked where the 400 purported elk between Miller Creek and Eight Mile were. He asked to see the census from Montana Fish, Wildlife & Parks. He said that the elk are not using his 40 acres. He said that there is no evidence that elk are in the area: no tracks, bones, shed antlers, or scatological evidence.

**Matthew Taylor** said he was the president of the Eagle Watch Homeowner's Association, which sits between the largest two subdivisions proposed in Ravalli County: Legacy Ranch and Aspen Springs. He said that he is a hypocrite because he is a proponent of open space and higher density, but moved from Missoula and bought two acres of property. He noted that Perry Ashby built his home and he thinks it is well-built. He said that he does not support the subdivision for a number of reasons and that the true answer for each review criterion is a significant "No." He said that the exo-system cannot support the subdivision. He said he came across a car crash and mentioned the proposed subdivision to the responding officer. The officer said "Tell me about it." He said although he likes the concepts behind the subdivision and had a good experience with Perry, he thinks it is not sustainable and not good for the Valley. He said an international bestseller book called Collapse includes a chapter about the Bitterroot Valley. He explained that the book is about societies that fail to plan for the future. He affirmed that the Board Members are some of the most important people in the Valley. He likened the Valley to a giant diamond in the rough in a giant catapult. He said that the Planning Board and County Commissioners have knives in their mouths and the line on the catapult is taught with tension. He said if they cut the rope, they will catapult the valley into the future. He said he does not know where the diamond will land or if it will shatter into a million pieces. He asked the Board to act carefully.

**Cam Stringer** said he was a Senior Hydrologist with Geomatrix in Missoula and wanted to answer some specific water questions. He said that there have been several test wells drilled and some pumping tests done. He said that the Board

is not composed of hydrogeological experts, but the staff at DNRC is made of experts. He said that the developer has to prove three things to the DNRC: that water is physically available, that it is legally available, and that it will not have an adverse impact on senior water rights. He said they have to show that there is enough available drawdown between the pump and water table so they can sustain their pumping rate. He commented that the developer will have to talk with the neighbors and find out how many water rights are spoken for. He said they want to make it so that senior water rights holders of groundwater and surface water will not be adversely affected. He noted that they are collecting information and the DNRC has the authority to approve or deny the application. He said he believes that there is plenty of water there to supply the subdivision.

**JR** said that if no one else wants to speak that the Board should close public comment.

**Dan** said that they are only suspending public comment until the next meeting and will reopen it since some people left with the belief that there would be another hearing.

**Lori** motioned to continue the hearing.

The Board agreed to continue the meeting on July 12 at 7:00 p.m. at the Florence-Carlton High School Gym.

**8. Suspend Public Hearing Until Next Meeting**

**9. Next Regularly Scheduled Meeting: July 19, 2006 at 3:00 p.m.**

- (A) Gunshy Ridge III (Bitterroot Valley Development, LLC) – Public Hearing
- (B) Hidden View Estates Major Deviation (Kearns) – Public Hearing
- (C) East End Lot 1, AP (Kwapy) – Public Hearing
- (D) Centennial Lot 17, AP (K&J Development) – Public Hearing
- (E) Castle Heights (Greer) – Public Hearing

**10. Adjournment**

**Dan** adjourned the meeting at 11:29 p.m.

**Ravalli County Planning Board  
Meeting Minutes for July 12, 2006  
7:00 p.m.**

**Florence-Carlton High School Gym, 5602 Old Highway 93, Florence, Montana**

**Continuation of Public Hearing**

**Aspen Springs (Wesmont Builders/Developers, Inc.) Major Subdivision and Eight Variance Requests**

**1. Call to order**

**Dan** called the meeting to order at 7:01 p.m.

**2. Roll Call (See Attachment A, Roll Call Sheet)**

**(A) Members**

Mary Lee Bailey (present)  
Dale Brown (present)  
Ben Hillicoss (present)  
Dan Huls (present)  
JR Iman (present)  
Roger Linhart (present)  
Chip Pigman (present)  
Les Rutledge (present)  
Lori Schallenberger (absent – excused)  
Gary Zebrowski (present)

Park Board Representative: Bob Cron (absent – excused)

**(B) Staff**

Benjamin Howell  
Karen Hughes  
James McCubbin  
Renee Van Hoven  
Jennifer De Groot

**3. Amendments to the Agenda**

There were none.

**4. Correspondence**

**Dan** noted the Board had received a great deal of correspondence. (See Attachment B, Public Comments Received after July 5 Public Hearing; Attachment C, Applicant Comments Received after July 5 Public Hearing; Attachment D, Phone Call from Julie Vacca; Attachment E, Email from Tom Stanton; and Attachment F, Letter from David Hurtt)

## 5. Disclosure of Possible/Perceived Conflicts

**JR** said that his son, Trevor, works for WGM as a traffic engineer, but is not involved with this project.

**Dale** said he had worked for Perry Ashby once or twice, but did not have a conflict of interest.

## 6. Public Hearing – Continued from July 5, 2006

**Dan** gave the ground rules for the meeting. He reminded the crowd that testimony should be addressed to the Board, who will process it before making a recommendation to the County Commissioners. He asked the public to limit their comments to the subdivision review criteria. He explained that the developer's team did not finish their reports in the previous meeting and would present the information at the start of the meeting. He said the Board would not accept repeat testimony or testimony from people who spoke at the last meeting. He noted that the Board wants to wrap up public comment this meeting and each person is allowed three minutes to testify. He asked the audience to raise their hands and wait to be recognized by the President. He asked the Board if they wanted to accept 3-minute rule waivers at this meeting.

**Chip** noted that there was a large audience that wants to be heard and recommended against the 3-minute waivers.

**Dan** announced that the Board will not accept 3-minute waivers at this meeting.

### (A) Aspen Springs (Wesmont) Major Subdivision and Eight Variance Requests

#### (i) Public Comment on the Subdivision Proposal and Variance Requests

##### (a) Applicant and the applicant's representatives

**Ryan Salisbury** from WGM Group explained that the County is faced with about 400 new households every year, according to TischlerBise, with about 2.5 people per household. He said if they all lived on 5-acre lots, they would take up 3 square miles per year. He said that 300 of the new households are in the Florence-Carlton School District. He noted that Aspen Springs will only create 32 lots per year, or 10% of the 300 households that are created in Florence every year. He said that the developer is proposing a development pattern that is stable and in line with the Growth Policy. He noted that the development provides cluster development adjacent to existing residences. He said that when the subdivision is approved, people will know what to expect. He noted that the new homes will create demand and explained that there will be some affordable housing, some middle-income housing, and some houses that will cater to higher-income people. He said that he would like to focus tonight on water, soils, sanitary/sewer, wildlife, schools & tax base, legal issues, and hear from the founder of the project. (See Attachment G, WGM's PowerPoint Presentation)

**Cam Stringer** said he was a hydrologist with Geomatrix and noted he had 17 years of experience. He presented a PowerPoint show about Aspen Springs' water situation. He concluded that the development should have enough water

available by digging deeper wells. (See Attachment H, Aspen Springs Water Supply Development)

**Chris Holman** said he worked at Holman Consulting Engineers in Missoula and is a soils and materials engineer with 30 years of experience. He explained that the information available from the NRCS (National Resources Conservation Service) was only general data collected with a hand auger. He noted that the best data is received from doing onsite investigations and analyses by a soil scientist. He explained that there were a variety of soils present at Aspen Springs, including gravels, silty gravels, sand, silty sands, and silts. He said that the soils should be feasible for the project. He explained that the County's road standards require the use of uncrushed sub base gravel as the final layer before asphalt paving. (See Attachment I, Reports from WGM Group and consultants)

**Ryan Salisbury** said he works for WGM as a Registered Professional Engineer with Montana and has nine years of experience. He said that the road design for Aspen Springs is preliminary and that the Road Department will review the roads to make sure they can handle that volume of traffic. He stressed that they have not had their final road reviews. He noted that the developer will have to prove there is sufficient water for the development. He noted that they have drilled several soil test pits and saw that the soils are perfect for road design and sanitary/sewer. He explained that the NRCS calls the soils severe because of bedrock, but while digging their deeper wells, they have not found any bedrock. He said they have performed percolation tests for sanitary/sewer and they have final reports to show there is sufficient sewer and water. He explained that DEQ approval is an on-going process and no denials have been issued. He noted that the process is much like getting a subdivision sufficient, but noted that the subdivision process is faster because DEQ cannot answer the applicant until 60 days have passed. He reported that the subdivision has approvals for groundwater direction flow and they cannot get final approval from DEQ without preliminary plat approval. He explained that the Park Board's recommendation to enlarge a park area affects the DEQ submittal.

**Tom Anderson** with Glacier Precast Concrete in Kalispell explained the advantages of the AdvanTex Advanced Wastewater Treatment System. He said that the system is a re-circulating filtration system made by Orenco systems, which produces 97-99% clear, clean, and odorless water-quality effluent. He said the final treatment is through soil percolation. He noted that the State of Montana considers it a Level 2 Treatment system, which requires a minimum 3-year approval process. He also said that the system meets requirements of the Ravalli County Environmental Health Department, the states of Oregon and Washington, the National Sanitation Foundation (NSF), and meets Federal EPA requirements for Secondary Treatment standards. He said that there are over 10,000 Orenco AdvanTex systems nationwide. He noted that there are 155 units in Montana, 15 of which are commercial or multi-family and two of which are Ravalli County, in the Wildflower and Falcon Estates subdivisions. He noted that the system has a dedicated phone line that monitors data. He stated that the system does not produce active sludge waste or discharge untreated sewer waste or effluent because it is completely sealed. He also noted that the system could be diverted into a municipal wastewater system. He said that Aspen Springs exceeds the phosphorus and nitrogen level requirements. (See Attachment I, Reports from WGM Group and consultants)

**Ryan Salisbury** said that the AdvanTex representative can service the system and Orenco will provide septic tanks, parts, and pumps in Missoula. He noted that Orenco is a large company that will be around for a long time and will train an operator for their system. He explained that the systems come in individual pods that can be expanded for phasing and are adaptable to a various number of homes. He noted that each phase can stand alone and will be approved by the DEQ separately. He said until the water tank is installed, the subdivision will use hydro-pneumatic pumps. He restated that there will be more than enough water for the homes and that Aspen Springs will not produce more than the allowed phosphorus and nitrogen. He explained that the proposed septic tanks for each home provide primary treatment which screens certain items, making it easy for the maintenance provider to charge homes that dispose of inappropriate items. He noted that the water goes into a collection system and then to a recirculation tank. He said that studies say that four feet of depth and usage of a community drain field is more effective than a municipal system. He explained that the Park Board requested an expanded park to the south because it was a larger, flatter area; WGM changed the design and moved houses north. He showed the proposed trail system. He explained that the Park Board requested a crushed gravel path from Lower Woodchuck Road to Eight Mile Creek Road and along Mountain View Drive as well. He noted that there is a primitive hiking trail proposed throughout the project that will create connectivity and there will be sidewalks in the interior of the subdivision. He said that there were two options for the bicycle trail next to the road. He said the developer might have to ask for design exceptions from the clear zone and shoulder width and asked the Board for feedback on that issue.

**Steve Fisher** said he was a Wildlife Biologist and has been a consultant since 1981. He said that he evaluated the environmental assessment submitted for Aspen Springs and found no faults with the report by Dr. Joe Elliott. He said that regardless of classification as an elk winter habitat, any vacant land can be and is used by wildlife. He said that during his on-site investigations, he found no evidence that elk use the land and most of the elk winter range in the northeast corner has been set aside as open space. He remarked that areas of crucial elk winter habitat are located five miles to the east and on the other side of the river and highway from Aspen Springs. He said that his role is to make sure that wildlife are taken care of and he noted that there is a lot of property to the east of the development which is privately owned. He said that he has worked on many projects with Perry Ashby as the environmental consultant. He noted that Wesmont has incorporated some of his designs and concluded that Aspen Springs is an excellent development. (See Attachment I, Reports from WGM Group and consultants)

**Ryan Salisbury** said he was submitting letters from Montana Fish, Wildlife, & Parks about adjacent subdivisions. (See Attachment J, Letters from Montana Fish, Wildlife & Parks)

**Jim Sylvester** said he works with the University of Montana and has researched Montana economics and demographics since 1980. He said that NPA Data is a consulting firm that estimated 400 more houses are created in the County per year. He asserted that the construction of Aspen Springs will increase the taxable valuation of the Florence-Carlton School District. He noted that with an

average house price of \$170,000, the average taxes on a house in the development would be \$5,100. He stated that at full build out, the total taxable value will be \$4.9 million. He stated that the high school enrollment will be 310 students in 2008 and 331 students in 2014, which would only be 54 students less without Aspen Springs. He stated that in 2014, the elementary school will have 850 students, only 76 more students than if Aspen Springs was not constructed. He noted that Aspen Springs' homeowners will pay \$2,045 in property taxes per student, but currently, taxes collected in the District are about \$1,256 per student. (See Attachment I, Reports from WGM Group and consultants)

**John Tabaracci** said he was an attorney with Sullivan, Tabaracci, & Rhoades in Missoula and noted that he has worked with Perry for six years. He discussed road mitigation and mentioned Montana Code Annotated 76-3-608. He stated that there is minimal elk use in the northeast corner and asserted that flash flooding is not an issue. He discussed the elk winter range and mitigation proposed for that. He noted that Wesmont proposed a payment of \$88,000 requested by Montana Department of Transportation for improvements to the proposed roundabout at the intersection of Eight Mile Creek Road and Eastside Highway and \$2,000 toward a traffic study of Eastside Highway and US Highway 93. He said that the former Florence-Carlton School Superintendent agreed to \$150 per lot, which is a typical school donation. He recommended that the Board look to Montana Law regarding additional monetary requests. He said that the Board will have to decide if flag lots will be allowed, and added that the Subdivision Regulations only prohibit flag lots when they are used to avoid road construction. He noted that the Board has to determine proper traffic flow between Aspen Springs and Riverview Orchards. He explained that the neighbors have requested only an emergency access through the subdivision to the south. He noted that the Montana Subdivision & Platting Act and the Ravalli County Subdivision Regulations allow for variances because no development is the same. He said that Wesmont will file their first final plat within the variance timing window. He said that the subdivision does not require an environmental impact statement and that the Board only has to find an overall positive finding for variances. He noted that the Subdivision Regulations do not limit major or minor variances. (See Attachment K, Letter from John Tabaracci)

**Ryan Salisbury** said the developer has proposed mitigation fees and submitted a spreadsheet that breaks down the improvements to the roundabout, a traffic study, fees proposed for the schools, and the Fire District and Sheriff's Office. (See Attachment L, Aspen Springs Proposed Mitigation Fees)

**Perry Ashby** said he was the founder of Aspen Springs and moved to the area 12 years ago. He noted that he built houses in the Hidden Valley area as well as houses in Missoula County, Ravalli County and other municipalities in Ravalli County. He said that he has advanced from master carpenter to builder/developer. He noted that he has housed 400 families and earned the distinction of State Builder of the Year in 1998 and Missoula Builder of the Year in 1999. He said that the Montana governor presented him an award in 2002. He said that he tried to incorporate many Growth Policy themes into his projects. He said that between 1989 and 2000, the median income rose less than the median home price. He observed that the country presently has 300 million people, which is expected to double by 2040. He asked how the country was



going to grow and noted that growth is here and family units continue to form. He noted that one solution is look to the Growth Policy and embrace good stewardship in practices. He emphasized that many of his ideas are nationally embraced development practices with amenities like open space and trails. He noted that intended open space composes 42% of this proposal, which can be shared by all the people in the subdivision. He explained that he incorporated the following components from the Growth Policy: promotion of affordable housing, a system of nexus & proportionality, promotion of cluster development, creation of necessary infrastructure, like sewer and water, and open space. He noted that at the last public hearing, not one opponent of the subdivision was in the category of people just starting out in life. He asked them to remember their years in the starting stages. He asserted that he considers home ownership to be the cornerstone of the American Dream. He noted that he has 4 small children. He suggested that someone has to go through the painful process and embrace this in order to approach good land steward practices. He thanked the Board, Staff, the County Attorney, and the Wesmont team. He thanked the public for expressing their concerns and positions. He noted that as a builder, his reward is thinking about the hundreds of families in homes that he created for them.

(b) All other members of the public who wish to speak

**Ravalli County Sheriff Chris Hoffman** said he was not planning on speaking, but decided to after reading last Friday's Ravalli Republic. He said that his role as Sheriff is to address public safety and impacts on public safety by growth in particular, not by any one subdivision. He noted that he is not opposed to growth, but wants to see growth that pays for itself. He said he does not know if his office can provide public services under the current growth trends and wants to see fundamental changes in the way the County government is funded. He noted that he has had no official correspondence with Wesmont other than the letter given to the Board. He said that Wesmont did approach him at the Board's suggestion and he is in possession of their mitigation proposal. He said that he will provide the Board with his response letter by the middle of the following week. He noted that he is always available to answer questions about impacts on public safety.

**Ward Wenholz** said he has lived in the area for 47 years and noted that Montana has changed significantly. He said he gave up fly fishing because the streams and rivers were too crowded and took up radio-controlled airplanes instead. He explained that the field he uses is right where the proposed Aspen Springs subdivision is located. He noted that despite that, he fully supports the development. He said that without this kind of development, the Bitterroot Valley would be 5-acre ranchettes that cost \$300,000. He said he has two children that cannot afford to live in the area and he saluted Perry for providing affordable housing. He said that a man should be able to do what he wishes with his land. He said that the development will create jobs for the community. He noted that in the United States from the 1940s to the 1970s, people identified problems and solved them. He said he would like us all to come together to make a great community.

**Bill Lewis** said he could not hear or see the projection screen and asked how he could make intelligent comments without the information. He said it was not

fair that the developer had an hour and 35 minutes for their presentation, but the public can only speak for 3 minutes. He said that he lives here for the open space and country living.

**Cheryl Holden Rice** said she is a neighbor to the development and lives in Eagle Watch on a 2-acre parcel. She said that her neighbors had to drill three wells because they kept going dry and other neighbors had sand in their well. She noted that much of the area is named after her forefathers and mothers. She said that their motto was that there is no such thing as someone we do not know. She recommended letting people in, but urged the Board to consider a 2-acre minimum on housing for the entire County.

**Pam Carlton** said that she and her husband live on Eastside Highway in Stevensville. She said she does not believe that the Board can recommend approval of the subdivision based on the subdivision regulations. She read the Basis of Decision for Preliminary Plat in the Subdivision Regulations, Section 3-2-7. She said that the subdivision has to be in the public interest. She noted that the six criteria are used to determine if the subdivision is in the public interest and said that the review must include those criteria, but not exclude everything else. She asserted that this subdivision does not meet those standards. She said that the developer is requesting variances just for him. She asserted that the subdivision is not in the public interest of the County, taxpayers will have to pick up the bill for the development, and Florence-Carlton School District will have to pay for a new school. She recommended that the Board get their own experts.

**Violette Schrage** said she lives on Eastside Highway in Florence and has lived there for 50 years. She suggested that there will be traffic problems stemming from Aspen Springs. She said that with 643 homes and 2 cars per home, there will be a large increase in traffic that will come by her house and delay her entry on the Highway. She said she drives a school bus and it is difficult for her to turn onto Eastside Highway with the current traffic. She asked the Board to make sure they looked at traffic impacts. She said that the people living on Mountain View Road are not excited to have extra traffic from Aspen Springs. She noted that she has tried different departure times from her house, but no one slows down to let her on and she does not expect the new traffic to slow down either. (See Attachment M, Letter from Vi Schrage)

**Marilyn Owns Medicine** asked to speak with 3-minute transfers. She noted that she is in possession of denial letters from DEQ.

**Dan** said that the Board is not accepting 3-minute waivers this evening.

**James** recommended that she submit them as written comment. He also noted the Board would make accommodations for those with disabilities who wished to speak but could not stand in line for a long period of time.

**Marilyn Owns Medicine** complained that Cam Stringer was allowed to speak again, although he spoke at the previous hearing.

**Sheriff Chris Hoffman** asked for the crowd to behave and noted that the Board came to Florence as a convenience to the people who live here. He said that

the Public Hearing rules are being followed and asked for order. He recommended that Marilyn find someone who had not spoken and give that person her information to read. He explained that no decision had been made yet and that the rules must be followed.

(**Monica Scullion** took the place of **Marilyn Owns Medicine**, who sat down.)

**Monica Scullion** objected to the fact that Dan Huls directed the public to only comment on the six criteria. She noted that the 6 criteria are only review criteria required to be included in evaluation of whether or not the subdivision is in the public interest and noted that the list is not exhaustive. She asked Dan if there would be another public hearing to discuss the variance requests. She referenced Section 3-2-7 in the County's Subdivision Regulations and objected to the six criteria. She objected to the 3-minute rule. She objected that written comments submitted by the public were not posted on the County's website. She objected to the fact that additional info will be presented by the developer and she cannot comment on it. She objected to the lack of importance of public participation. She argued that once the information is received, the Board will have to hold another public hearing so public can comment on it.

**Jim Kearney** said he was a licensed contractor in three states, but said he will not work in Montana because there are no building codes. He said those who build here do so by sheer stupidity and greed. He noted that taxpayers in this state have to subsidize each new residence by \$15,000 a year. He remarked that although some developers have donated \$500 per house to schools, it costs \$7,500 to educate one child. He commented that the Board says they are limited by criteria and noted that we need rules, because without rules, there is no order; without order, there is chaos. He noted that Sheriff Hoffman said he could not adequately provide services and complained that the Planning Department was not open until 1:00 p.m. (Staff Note: The Planning Department has been open to the public from 9:00 a.m. to 5:00 p.m. since May 9, 2006.) He complained that there were no impact fees in the County. He said that the "Y" at Eight Mile Creek Road will only accommodate 440 cars and asked what would happen if everyone showed up at the same time. He said that although he is not questioning the expertise of the developer's consultants, he said that statistics can go both directions. He suggested bonding the developer to make sure that future homeowners will have water, sewage, and schools.

**John Carbin** said he lives in Stevensville across from the Wildlife Refuge and can watch buffalo from his house. He said that he attended the previous hearing and noted that Candi Jerke, Marilyn Owns Medicine, and Steve Hall brought up pointed questions and comments at that meeting, which the people of Florence could not hear. He noted that he was conscious of the traffic on Eastside Highway. He said that no one mentioned the big picture of the cumulative impacts a half-dozen mega developments would have on the Valley. He said that this development might be acceptable and get through the Board, but he asked about the upcoming subdivisions. He said that the Sheriff cannot provide services, air quality will be compromised, schools will be overcrowded, and taxes will not offset the developer's impact. He commented that the elk will never come near winter range because of all the houses in the vicinity. He asked how many people in the Valley approved of the development and said in

Polson, the Board approved an issue although there was a clear indication that the people were two to one against it.

**Susan Reneau** said she lives in Missoula County and opposes the subdivision. She said she has watched Missoula get ruined by development and said she loves Florence. She noted that Board members are the keepers of taxpayer's trust and recommended that they collect money from the developer upfront. She said that Florence does not have sewer, water, streetlights, or firefighters. She asked how someone at the back of the subdivision would get out of it if they had a heart attack. She remarked that if the subdivision is approved, Florence will not be a precious community anymore, but will turn into a mess. She recommended that the Board not copy the way Missoula County handled growth. She said that a donation of \$150 per lot per student is outrageous. She said that road improvements to the area are going to cost multi-millions of dollars. She asked how much the costs will be and recommended charging the costs to the developer before the subdivision is approved. (See Attachment N, Letter from Susan Reneau)

**Matthew Piedalue** said he lives in Florence and believes that the Board has enough information to allow them to deny the subdivision. He noted that in previous hearings, Marilyn Owns Medicine, Candi Jerke, and others gave evidence that the Board could not approve the subdivision. He remarked that he is a young man who does not own a home. He said that Perry's speech offended him and that he will never buy a home in a development like Aspen Springs. He noted that he wants the Bitterroot to stay the way it is so his kids can enjoy it without miniature towns. He said he believed Perry was creating the subdivision to make millions of dollars, not for personal gratification.

**Cheryl Harkin** said she lives in Hidden Valley in Florence. She said that she attended the previous week's hearing and educated herself afterward. She commented that the principle issues of this subdivision are stewardship and following the law. She noted that although Wesmont may offer affordable housing, she asked about the costs: "depletion of water supplies, traffic congestion, overcrowded schools, [and] lack of available fire and police support." She discussed the rules required for approval of a subdivision and variances. She asked what a reasonable and prudent person in the same circumstance would do. She asserted that Aspen Springs is illegitimate and asked the Board to deny the subdivision. (See Attachment O, Letter from Cheryl Harkin)

**Carol Caldwell** said she lives off Eight Mile Creek Road and thinks the traffic is already drastic. She said that with a large subdivision with only one entrance and exit, it will be worse. She said the neighbors of the development will have to eat dust for 22 years. She recommended denial of the subdivision.

**Allen Baumberger** said he wanted to ask Wesmont how much money it will make from the proposed subdivision. He said that he has four sons and two daughters who paid their way for houses. He noted that he is in a Homeowner's Association that has to maintain roads and the County did not want to help pay for their maintenance. He accused the developer of just looking for money.

**Richard Uedel** said he was from Florence. He noted that there used to be some nice areas on the North-South Route through Interstate 15 in Utah, but commented that they are all overdeveloped now, as is the area between Victorville and Sacramento. He noted that the School District requested \$5,000 per lot. He said that that contribution is in line with what is required in other places, and noted that it is law to make large contributions in San Bernardino County. He said that the developer's small donation offers to the Sheriff's Department and Fire Department are a slap in the face to what they are offering this community.

**Mark Bellon** said he had a relative in Iraq and appreciates the democratic process in the United States. He said that he is a Professional Engineer in Missoula and has worked with Perry. He commented that he believes Perry is sincere and has done exceptional, quality developments, which meet, if not exceed, the criteria. He commented that he is not affiliated with the project, but Perry has assembled the most elite group of consultants available. He said that the aquifer and water issues all have quantifiable data that will be stringently reviewed by the DEQ and Ravalli County. He said that Montana is rapidly growing and there needs to be new development. He said he was impressed that Aspen Springs offers trails, 160 acres of open space, preservation of natural amenities, and exceeds open space requirements. He said that the homeowners will appreciate the extra amenities. He said it is nice to have a place for young homeowners and elderly people to go to purchase a home. He noted that the phasing over 20 years will help alleviate impacts on the community. He declared that we cannot put a fence around Montana.

**Dave Curtis** said he lives in Missoula and is a Senior Project Manager for Wesmont. He said he has been with them for 8 years and has seen 300 families purchase homes he helped create; his grandparents also moved into one of his homes. He said the proper handling of housing demand is not with 5-acre parcels or to wait until privately-owned land is gone. He said that growth will not slow down and people need to look beyond their generation. He said that he has seven children and realizes they will need affordable housing. He remarked that future homeowners in Aspen Springs will have a safe, affordable place to live with trails and parks that will give residents a sense of place. He requested that the Board approve the subdivision. He asked how many people in the audience supported the subdivision and about 100 people raised their hands.

**Richard Questel** said he lives in Hidden Valley South and spent 31 years in public safety. He explained that he is not against growth in the County, but 600 homes over 20 years will cost public safety. He said that he serves on a committee that deals with road issues on Eastside Highway. He explained that some people want to raise the speed limit and then put in a roundabout that is 18 miles per hour. He said that the road the developer starts will be destroyed by the time this project is finished. He said he did not think the roundabout could accommodate the homes from Aspen Springs. He noted that the subdivision will have a large impact on public safety and recommended that the developer donate \$390,000 for a fire truck.

**Susan Roy** said she lives on Klements Lane between Eastside Highway & Eight Mile Creek Road. She said one of her 29 neighbors tried to get a permit and was told that that land did not exist and his house was underwater; he was told

he could only improve his property by one-third of its value. She said it takes 40 minutes for her to get to her job at the airport and said that she risks her life trying to turn onto Eastside Highway. She said that anyone who signs approval for the subdivision traffic to happen will be responsible for the traffic fatalities that occur. She also said that at Old Farm Kennels, where she boards her dogs, it is almost impossible to get onto the highway because of traffic. She noted that she and her neighbors were there first and they should be heard.

**Will Snodgrass** said he was heartened to hear that the contractor has chosen to go with advanced on-site wastewater systems. He noted that Europeans use specialized treatment systems like these and it is the wave of the future. He explained that with use of the system, there is no possibility of sewage getting into the environment and water recovery is possible. He asked Perry if he uses Oriented Strand Board (OSB) in his buildings and asked if he posted warning signs about the negative health effects it causes, such as asthma and destruction of brain tissue. He said that the transportation issue has been ignored and he has not heard about road construction. He asked the Board what road projects were involved in the proposed subdivision. He said that the Montana Constitution makes hearings a 2-way street. He asked who would pay for the road projects. He said that the developer has to comply with Title 75 of MCA if the roads use any state funding. He asked if there was an environmental assessment. He said the Board has to comply with federal laws. He said that growth effects of major land use projects are mentioned by the 1978 EPA, Page 1-9, which says that true costs of projects are born by residents of the area, not the developer.

**Libbie Curtiss** said she lives in Missoula and is a single mom who has a dream of owning her own home. She said that housing is too expensive and Aspen Springs would make it possible for her and others like her to own a home. She said the development provides amenities like walking trails and could be expanded to include a satellite YMCA or skate park. She said she deserves to be a homeowner.

**Allison Kinney** said she lives in Florence and is concerned with the lack of infrastructure and the current growth rate in Ravalli County. She said that her main issue is youth in Ravalli County. She said that parents in Ravalli County, and Florence especially, commute 40 to 50 miles to work. She noted that the County's average commute time is 30 minutes, 5 minutes longer than the national average. She noted that County residents often have to leave their kids alone for 12 hours a day. She said that 21% of the children in the County under the age of 18 live below poverty level and Montana is 49<sup>th</sup> in poverty in the nation. She posited that the County needs to address infrastructure, ability to work, and education.

**Chris Marquardt** said he lives in the Eight Mile area, but grew up in Missoula. He said that after serving in the Army, he came back to the area and noticed how much Missoula had changed. He said he is a first-time homebuyer in the County and has lived here for 13 years. He said his concern is that Ravalli County will turn into a subdivision of Missoula.

**Rosann Jenne** said she lives in Florence and is part of the problem. She said she bought a 20-acre tract and subdivided it into 5 lots. She asked the Board to

be consistent. She said that she had to pay \$250 per lot to the Florence-Carlton School District and \$8,000 for improvements to Eight Mile Road. She said she calculated that Aspen Springs' share of improvements on Eight Mile Creek Road would be \$1 million. She said that she moved to the Bitterroot Valley because she likes the open space. She noted that if Aspen Springs is approved, she will feel like she is living in Missoula. She asserted that Florence is not the correct place for this development. She asked that if the development is mostly for low-income families, how can the developer expect them to commute 40 miles per day to a job and afford gas prices. She said there is a purpose for homes in Missoula.

**Brad Lee** said he was from Stevensville and knows the Bitterroot Valley will continue to grow rapidly. He said he prefers cluster development rather than 5 or 10-acre orchard tracts.

**La Rue Moorhouse** said she has lived in Ravalli County for 25 years and stayed here after the passing of her husband because she cares about the County. She said that there were a lot of people who came from Missoula to testify in favor of the builder. She said that those comments have nothing to do with the six criteria or the subdivision application and their testimony was inappropriate. She noted that people from Missoula do not live here and do not care about Ravalli County. She explained that the Aspen Springs application is a most unusual situation, which calls for unusual measures. She said she does not object to the 3-minute rule, but believes it should be longer because the application is larger than normal. She said that the typical family has a mom, dad, and two teenagers, all with cars. She said that 4,800 cars would create a huge impact, especially on Eastside Highway. She acknowledged that she was part of Bitterrooters for Planning, a group she said was in favor of growth, but was also in favor of good planning.

**Lori Rokosch** said she lives on Dry Gulch Road between Florence and Stevensville. She said that she is not against growth but is against unreasonable growth. She said she is a Registered Nurse and works as a volunteer emergency responder who gets support from the Hamilton and Missoula ambulances. She said there have been numerous calls and deaths on Eight Mile Creek Road. She said that it is just a matter of time before someone everyone knows dies in a car crash. She said that at some point, the responders will not be able to keep up with the volume of calls. At the present time, she said, response time depends on what time of the day it is and who is scheduled. She said that donations are great and no Fire Department, Police Department, or Emergency Response Unit would refuse them, but said that mitigation is temporary. She said that she does not believe the proposal covers impacts for traffic. She said affordable housing is great, but it needs to be connected to infrastructure. She said many driveways in the valley are not wide enough for the ambulances and said she does not believe that the proposed driveways are wide enough either.

**Mary Beth Henningfield** said she lives off Mountain View and said that only audience members from Florence or Stevensville count. She noted that her daughter attends school at Florence-Carlton and she has a respect for her education. She invited the Board and audience to witness the school in action and noted that the number of students is increasing. She shamed Perry for

offering \$150 per lot to the School District. She noted that the Sheriff said he did not have the capability to sustain services to the area. She reported that there was a fatality on Eastside Highway a couple weeks ago and the road shut down. She asked the Board to imagine what would happen if hundreds of more cars were added to the mix. She said she was the first one to arrive at the fatality and it took a deputy 30 minutes to arrive. She said that she and her children will subsidize the taxes from this development. She said that the developer's road contribution is not adequate. She said that she is not against growth, but is against traffic, fatalities, increased crime, cluster development, taxes, and school overcrowding. She noted that this subdivision is not what she wants or the people want.

**Kevin Viegut** said a developer like Perry gave him a starter home opportunity and now he has his dream home. He added that a few years ago, he started his own business with help from Perry. He said Perry helps others and provides places for businesses to start. He said he did not see the subdivision as a bad thing.

**Erik Hess** said he lives in Hidden Valley and studied wildlife biology at the University of Montana. He said he now works at Wesmont. He said that he does not doubt that people love the Florence area, but he has not heard any great arguments against the subdivision. He said that his two children attend the Florence schools and all he hears is criticism. He asked the Board to think outside of the box.

**Bob Boyce** said he lives in the area and is happy with his weed patch. He noted that he has lived in several areas and none of the lots were smaller than 6,500 square feet. He said there are many problems with small lots, including no place for children to play in their yards. He invited the Board to drive through Canyon Creek Village. He explained that he spoke with Ben Howell, who said that Staff felt that the minimum lot size of 7,500 square feet was just an arbitrary number placed in the Subdivision Regulations. He said he understood that sometimes people just have to pick a number, but recommended that the County go through the planning process county wide. He said if the County does not, the Board will be plagued with this variance. He noted that the subdivision will be governed by a homeowner's association, but from his experience, the people are not paid or trained.

**Will Renard** said he was ashamed to listen to the selfishness of people who spoke. He noted it was not fair to pick on this one subdivision and say that it will break the camel's back, when it sounds like the schools and Sheriff's department are already "broken."

**Robert Wallace** said he lives at the corner of Lower Woodchuck Road and Eight Mile Creek Road and sees many accidents there. He said that he planted trees and bushes on his property, but knows that if 5,000 new vehicles are in the area, it will cause a problem with sight distance in time. He noted that no one stops at the stop sign anyway and recommended a yield sign so that people could merge into traffic as on a highway. He said that Eight Mile Creek Road and Lower Woodchuck Road have speed limits of 50 miles per hour, which is dangerous with the amounts of horses, children, dogs and cats present. He said that he is not against growth, but that this type of subdivision is putting people



with smaller lots next to larger lots and asked if there was any better land closer to the highway where they could have higher density housing. He asked the Board to use good judgment in where they allow buildings. He recommended that the Board allow subdivisions where they are needed and make it possible for future residents to get in and out of town. He commented that the people in the future subdivision will not be working in Florence.

**Bethanni Horn** said she graduated from Stevensville High School and is now getting to the point where she and her husband can buy a home. She said that when she is asked why she stays here, she responds that she values the quality of life over quantity of pay. She asked if there was an economic growth plan to improve jobs or if the people in this subdivision will be subject to the same low-paying jobs in the area.

**Cheryl Tenold** said she was a recent transplant to the Valley and said if she wanted to live 10 feet from her neighbor, she would live in Missoula. She said that the developer has proposed \$150 per lot to the School District based on the addition of .4 children from each house. She noted that the developer himself has 4 children, not .4. She noted that the .4 sounds like a national demographic that does not take into account the large number of children in the Bitterroot Valley. She said that she was able to purchase a 10-acre ranchette for under \$300,000, but it took her seven years to be able to own her own house. She noted that there are rules in place to control growth and explained that if they are followed, the Board will not open itself up to the possibility of discrimination. She said the Board is setting a precedent for long-term growth by the way they handle the variance requests.

**Ted Tenold** said he lives in Stevensville and that the only constant in the universe is change. He said that he never thought he could afford a home because it is daunting. He said that having an affordable house is a blessing. He noted that planned communities are a nose of a camel under the tent flap. He said that he does not know of a growth policy, although he has heard of a couple of grassroots movements that want to bring planning to the valley. He said that in regards to variance condition 2, conditions are unique to every property. He asked that if the County allows a developer of good character to develop under those pretences, what would happen when a big developer without those morals comes to develop in the Valley. He explained that he is concerned about planning and growth within reason. He commented that planned growth is one thing, but allowing growth is something quite different.

**Russ Copland** said he lives off Sky View Lane off Eight Mile Creek Road. He said that when he moved in eight years ago, he only had one neighbor. He noted that now there are 30 houses that have gone in to the east of his house. He said he commutes to Missoula and sometimes the traffic is backed up to the storage sheds on Eastside Highway with people trying to turn onto Highway 93. He noted that there are no recovery zones on Eastside Highway and said that his car was totaled earlier in the year. He commented that although the County is rapidly growing, he moved here for the quality School District. He said that the County has Mayberry right now and he would hate to lose that. He said that people will live on top of each other. He noted that no one spoke about the loss of mule deer habitat and mitigation for that. He also said there used to be an

antelope in the hills until he passed away. He asked the Board to preserve the quality of life in the County.

**Mike Hillborough** said he has Parkinson's Disease and is the recipient of the emergency care system. He said he was concerned that the cluster development would lead to a crack house community. He noted that lower-income housing areas attract drug dealers. He said there is more meth use in Florence than in other areas of Montana. He said he has seen many deaths on Eastside Highway over the years and there will be many more with Aspen Springs. He said during the hand-raising over who supports the development and who does not, only one person from the Bitterroot Valley raised his hand in support of this development.

**Steve Arno** said he has lived in Florence for 31 years. He noted that a cluster development was proposed in the Florence School District in the late 1970s named Bitterroot Meadows. He said that Missoula County turned it down although developers had offered to pay \$1,200 to the School District. The County was told that the development in the area would be awful if they denied the subdivision. He noted that it was denied and people live on 5 or 10-acre tracts, which they love. He said he studied cluster development in graduate school in the late 1960s. He noted that one of the principles was not to put the development in the middle of nowhere where people have to travel. He said that since each person in the subdivision will have to commute 25 miles each way, it will create a huge impact on the roads. He said that cluster developments should be placed on the edge of the town where the people can access things easily. He gave an example of Canyon Creek Village. He said a development like Aspen Springs is called a "leapfrog" development because the developer purchases cheap land way out. He noted that it is hard to find properties close to infrastructure, and this virgin land is appealing, but it is not good for cluster development and not part of that concept.

**Dan Mahn** said he moved to Florence in 1980 and chose to stay here while his friends moved off to bigger cities to make money. He said that he does not believe the developer wants to change the quality of life for Florence residents, but wants to pursue growth. He said that he is concerned with the rules in place and especially the lack of impact fees. He asked the Board to look at the numbers of how much subdivisions impact schools and fire stations. He said he finds it appalling that there is no long range plan for impact fees. He asked if there is a way to deny the subdivision until the formula is corrected. He noted that covenants do not work because there is no enforcement. He also noted that some roads are maintained one mile and then are not maintained for the next.

**Sally Carlson** said she has been a real estate broker in Florence since 1981. She said she knows Perry and his family, but asked if the housing offered is really affordable housing. She asked if a single woman could afford to live in Aspen Springs and commute to Missoula with rising gas prices. She asked who will maintain and repair internal roads. She said that the homeowner's association will, along with maintenance of the water and sewer systems. She asked if people can afford extra fees even if Perry can keep the initial housing prices low. She asked what would happen if things went wrong. She remarked that the development was in a wrong location for affordable housing. She noted

that she would love for her own children to have affordable housing, but worries that homebuyers in Aspen Springs would have to worry about commuting and daycare costs. She concluded that the subdivision was just in the wrong place.

**Lisa Stout** said she has lived in Florence for 10 years and recently bought a home on 5 acres. She remarked that she wanted a safe place to raise her daughter and she does not want to be crowded in. She said she wants to preserve the beauty of Montana.

**Bob Memmer** said he lives off Eastside Highway on Log Cabin Lane. He announced that he was in favor of cluster development. He noted that although he recognizes the concerns of the people that spoke, he said he is hearing about effects of this development, but not effects of development as a whole. He said there will be development in the County sooner or later. He said he has not heard anything that would make him not favor the development, but noted that the developer said that all the facts are not in. He said that he is in favor of this development and cluster development.

**Candi Jerke** said she was submitting about 100 or more additional signatures on the petition against Aspen Springs. She said she was able to raise about 700 to 800 signatures without much effort. (See Attachment P, Petition in Opposition to Proposed Aspen Springs Development)

**David DeCan** said he owns Century 21 Five Valleys Real Estate in Missoula. He noted that he was not against development because that is how he makes his living. He said he moved to Florence three years ago because of the schools. He said that Aspen Springs would destroy what he came here for. He said that as a real estate agent, he could make millions selling homes in Aspen Springs, but he does not care about the money; he cares about the quality of life in the Valley. He said that the Board is in a powerful position and he said he will hold the members accountable. He accused the Board of caving in to the developer because they would rather be sued by the people of the County. He asked the Board where their comprehensive planning and zoning plan was. He said he has never lived in a place without zoning. He asked the Board why they did not have building permits and said they could charge developers through them. He noted that when he built his house, the only inspection he went through was for the electrical permit. He said that the citizens and taxpayers of the County will hold the Board responsible for their recommendation.

**Phil Taylor** said he has lived in the area for 35 years and is speaking tonight for Stuart Brandborg, who could not attend due to an illness. He said that he used to live in the St. Louis Metropolitan Area. He said he believes that the application is deficient. He remarked that the real issue is not the application, but two separate clauses: "public health" and "public interest." He said that the "public interest" phrase originated in major eastern metropolitan areas because of slums and crime. He said that the western states threw it into their subdivision regulations as well. He observed that most people at the meeting are concerned about growth in the valley. He commented that the real way to control growth is through zoning, not reviewing subdivision applications. He asked on behalf of Bitterrooters for Planning for the Board to ask the County Commissioners to adopt interim zoning for the entire County. He said that the County needs comprehensive planning and although it is not too late for it, it is

getting there. He noted that FlatIron Ranch and Legacy Ranch are in the works and noted that the County needs planning. He noted that the people at the meeting like their quality of life and the Board has to weigh what is in the public interest. He asked if the developer's interest weighs more than the public interest. He said he opposes the subdivision on its merits.

**Ken Madden** said he lives off Golf Course Road in Hamilton. He thanked the Board for offering a process of debate and democracy. He said he was embarrassed at the lack of civility during the meeting and wonders about the community he wants to join. He said he has been a homebuilder in Arizona, Colorado, and Montana and watched the growth process. He said: "Only a fool would stand in the shade and complain that the sun does not shine on him." He asked the public to meet with the developer in a civil way. He observed that currently, the United States has 300 million people; by 2040, that number will double, not counting 11 million illegal immigrants. He said that growth will come to the valley and only one-third of County land is developable. He said the County will not accommodate growth if the land is parceled out in a 1-, 2-, or 5-acre grid. He commented that individual septic systems do not work properly. He said that if development is spread out, it will consume all the open land and agricultural land. He said that he is a conservationist and a realist. He asked the Board to look to the future. He said that a wise man leaves an inheritance to his children's children. He asked the Board to speak to preserve the quality of life and noticed that of all who spoke, only the elderly people asked to stop growth.

(c) Rebuttal (Board will decide whether or not to accept rebuttal)

There was none.

(d) Close: Public Comment

**Chip** motioned to continue the hearing next Monday night for Board deliberation.

**Gary** seconded the motion.

**Chip** asked Staff if there was a meeting space available.

**Karen** said Staff had reserved the Ravalli County Fairgrounds Event Center on Monday, July 17, at 7:00 p.m.

**Ben** noted that he received a lot of material tonight that he did not have time to look at yet. He said a continuation until Monday gives him time to process it.

The Board unanimously agreed to continue the meeting on Monday, July 17, at 7:00 p.m. at the First Interstate Event Center at the Ravalli County Fairgrounds in Hamilton.

**Karen** asked if the Board had closed public comment.

**Phil Taylor** said he believed public comment had to stay open to give time for the public to respond to additional materials given by the developer this evening.

**James** said the Board could close public comment.

**Dan** said the Board will close the public hearing and not accept any more verbal or written comments.

**Will Snodgrass** remarked that he did not believe the Board could close the public comment period and cited the court case Folsom v. City of Missoula. He said that in that case, the Board was not able to legally close public comment because the County has to make written information submitted at the meeting available to the public.

**7. Suspend Public Hearing Until Next Meeting**

**8. Next Regularly Scheduled Meeting: July 19 at 3:00 p.m.**

Gunshy Ridge III (Bitterroot Valley Development, LLC) – Public Hearing  
Hidden View Estates Major Deviation (Kearns) – Public Hearing  
East End Lot 1, AP (Kwapy) – Public Hearing  
Centennial Lot 17, AP (K&J Development) – Public Hearing  
Castle Heights (Greer) – Public Hearing

**9. Adjournment**

**Dan** adjourned the meeting at 10:42 p.m.

**Ravalli County Planning Board  
Meeting Minutes for July 17, 2006  
7:00 p.m.**

**First Interstate Center, Ravalli County Fairgrounds, 100 Old Corvallis Road  
Hamilton, MT 59840**

**Continuation of Public Hearing**

**Aspen Springs (Wesmont) Major Subdivision and Eight Variance Requests**

**1. Call to order**

**Dan** called the meeting to order at 7:03 p.m.

**2. Roll Call (See Attachment A, Roll Call Sheet)**

**(A) Members**

Mary Lee Bailey (present)  
Dale Brown (present)  
Ben Hillicoss (present)  
Dan Huls (present)  
JR Iman (present)  
Roger Linhart (present)  
Chip Pigman (present)  
Les Rutledge (present)  
Lori Schallenberger (present)  
Gary Zebrowski (present)

Park Board Representative: Bob Cron (present)

**(B) Staff**

Benjamin Howell  
Karen Hughes  
James McCubbin  
Renee Van Hoven  
Jennifer De Groot

**3. Amendments to the Agenda**

There were none.

**4. Correspondence**

**Karen** said Staff had received correspondence, which would be the subject of an upcoming discussion.

**5. Disclosure of Possible/Perceived Conflicts**

**Dan** said that it was not necessary to repeat the conflicts already stated at previous meetings.

**6. Public Hearing – Continued from July 12, 2006**

**(A) Aspen Springs (Wesmont) Major Subdivision and Eight Variance Requests**

**(i) Supplemental Legal Advice Regarding Procedure**

**Dan** said that the Board had closed public comment at the previous hearing so that the Board could deliberate this evening. He noted that new information had arrived.

**James McCubbin** said that he talked with County Attorney George Corn because Staff received new written comments and information from the developer today. He noted that the developer sent it before last Wednesday's meeting, but it was lost in the mail until today and the general public has not had time to review it. He said that since some of the information was received after the public commented the first time and they have not heard this new information, he and George recommended reopening public comment. He said there is no need for repetitious testimony, but reopening public comment would allow the public to comment on the new information. He recommended extending public comment to the next meeting as well because the public was told at the previous meeting that public comment time was closed. He recommended that the developer give a short summary of the proposal and to make sure all his information was presented before public comment time began. He noted that Montana Code includes the right of public participation and the right of the public to know what is going on. He mentioned that there were agency representatives in the audience and said it would be prudent to get their comments as well. He recommended continuing the meeting to the following week.

**(ii) Board Deliberation and Decision on Procedure**

**Gary** asked James if the Board has to publicly announce that public comment is reopened.

**James** said since the Board is still in the continued hearing, there is no legal impediment for renewed public notice of hearing. He noted that when a date and time is set for the following meeting, that information will go the County Commissioners and will be in the Ravalli Republic's Government Calendar.

**Ben** said he supports opening public comment and following laws, but he said he was concerned about the practical matter of getting feedback from the Board to the developer. He noted he feels like he has heard enough reasons to turn down the subdivision or ask for a serious modification of it. He noted that the Board has a meeting Wednesday with 5 more public hearings and he does not feel prepared for it because of the time he has spent on Aspen Springs, which totals hundreds of hours. He explained that if the Board will not give feedback to the public and the developer, then he is concerned about where the Planning Department is heading with backlog.

**Les** motioned to continue acceptance of public comment.

**JR** seconded the motion.

**Ben** asked if the Board could have some discussion before public comment and then reopen it.

**James** noted there were no legal problems with that suggestion.

The Board voted unanimously to approve the motion to reopen public comment.

**Dan** remarked that at the first two meetings, public comment was limited to 3 minutes. He asked the Board what time restrictions they wanted to impose for this meeting.

**Ben** proposed that certain agency representatives, such as the Sheriff, Road Supervisor, and School Superintendent, be given unlimited time or longer than 3 minutes.

**Dan** asked that the public limit their comments to new information.

**Ben** noted that in some cases, the public will want to offer rebuttals.

**James** said the Board can encourage the public to speak about new information, but noted they cannot control what the public says.

**Dale** suggested allowing a public speaking time of 5 minutes.

**Chip** motioned to allow 3 minutes per person with the exception of 3-minute rule waivers, which would be individually reviewed and decided by the Board.

**Gary** seconded the motion.

**Les** said he agrees with the motion, but noted there were complaints at the previous hearing that the developer's representatives took an inordinate amount of time. He recommended putting a limit on the developer's time and only allowing new information.

The Board voted unanimously to approve Chip's motion.

**Dan** explained that those who testified previously can do so tonight or at the continued public hearing. He asked the public only to speak about new information.

**Les** motioned to allow the developer and his agents 15 minutes overall.

**Ben** seconded the motion.

**Dan** asked if the developer could have an extension if necessary.

**Les** said he was concerned that people would not have time for rebuttal.

**Chip** noted that Council feels the development team needs to get their information all out tonight, which is tough to do if their time is limited. He noted that the public would not be commenting on the entire application if the Board cuts the developer's time short.

**Ben** suggested that the Board could waive the time if the developer was not finished in 15 minutes.

**James** suggested that the Board limit rehashing of information by the developer, but leave open-ended time for new information.



**Dale** noted that the developer was allowed to speak for one hour and 24 minutes at the previous meeting, but the public only had 3 minutes apiece. He noted that the last couple meetings went until 11:15 and he did not want to be there all night. He recommended limiting the developer.

**Les** amended the motion to allow the developer only 15 minutes for a summary of the proposal.

The vote was called; the members voted (4-6) and the motion failed.

**Gary** asked the developer to limit old information and present new data.

**(iii) Public Comment on the Subdivision and Variance Requests**

**Dan** reiterated that the Board has decided to open public comment and the 3-minute rule applies, although time waivers can be given to the Board for review. He explained that the developer will have time to present new information and correct anything that was erroneous in the first presentation, and then the Board will allow for public comment.

**Nick Kaufman** asked if government agents could go first.

**Dan** asked if anyone at the meeting associated with local or state government wished to speak.

**James** noted that Staff had received additional written comment and asked the Board to accept it into the record at this time. (See Attachment B, Applicant Information Received Since July 12 Public Hearing; Attachment C, Letter from Florence-Carlton School District; Attachment D, Agency Comments Received Since July 12 Public Hearing; Attachment E, Public Comments Received Since July 12 Public Hearing; and Attachment F, Additional Public Comments Received Since the July 12 Public Hearing)

**Dan** explained that he personally received 2 emails, which he passed on to Staff, and which will be available later. (See Attachment G, Email from Emmett Burns and Attachment H, Email from Cheryl Harkin)

**Nick Kaufman** asked the Board when public comment period would be closed for good, to both the public and the applicant. He asked if the Board received mail after the end of public comment, if it would still be considered.

**James** explained that information received after the end of public comment would be forwarded to the County Commissioners at their meeting on the subdivision. He noted that the Commissioners would evaluate the information to see if it was relevant and credible and if it needed to go back before the Planning Board. He explained if there was any significant new information, it would require a new hearing.

**Chip** asked the Montana Fish Wildlife & Parks (FWP) representative about its suggestion to reconfigure the lot layout and move some lots off the ridge and draw. He noted that among the other subdivisions in the area that were also identified as

being elk habitat or winter range, the FWP did not seem as concerned. He asked about the critical nature of the northeastern corner of the subdivision.

**John Vore**, a biologist with FWP, said that the 28 lots furthest up the ridge were a concern because there was no development beyond these lots to the east. He said that the other subdivisions in the area were surrounded by other developments. He explained that these lots would give the most benefit to wildlife.

**Gary** asked Sheriff Hoffman what he thought about the proposals to provide land to the Sheriff and Fire Department. He asked if the officers could respond and man a satellite office with their current budget.

**Sheriff Chris Hoffman** said he hoped to have a response by mid-week. He noted that he will accept any help from any place to accomplish his mission. He commented that the offer made by Wesmont will not mitigate the issues for law enforcement. He noted that the subdivision is far from infrastructure and his department has a hard time serving the north end of the valley. He also noted that any amount of growth is a problem. He explained that under current conditions, the department is looking at lengthened response times because they need staffing increases and resources.

**JR** asked Sheriff Hoffman if any offer of compensation from WGM can only be used for infrastructure, not salaries or cars.

**Sheriff Chris Hoffman** noted that was correct. He said that the offer from Wesmont is land to share with the Fire District for a substation, but noted the current problem is manning the substation. He noted that he could not use the money for salaries and since the donation was only \$100 per lot (\$64,000 over 20 years) the money could not be used for salaries in a meaningful way.

**JR** asked what the Sheriff's response was to neighboring subdivisions like Gunshy Ridge.

**Sheriff Chris Hoffman** explained that whether this subdivision is built or not, his department is having a hard time responding to emergency calls in the north and south ends of the valley. He remarked that currently, there are many times where he can only field 2 officers per shift, which means that response times are going to be long. He noted that the crux of problem is growth in general without responding resources to deal with demand.

**Les** asked if there are situations when they cannot send officers to respond because of priorities elsewhere.

**Sheriff Chris Hoffman** said that that was unfortunately true. He noted that the deputies always respond to crimes against persons first.

**Chip** said that since the Sheriff is subject to Senate Bill 185 and its limitations, it does not seem like there is a good solution. He noted that even if the developer throws money into impact fees, that gesture will not help the Sheriff fund more deputies.

**Sheriff Chris Hoffman** said that as it is written, Senate Bill 185 is unusable to him. He noted that law enforcement looks at capital improvements as rolling stock and

vehicles. He observed that his department has a fleet crisis and most of the cars need to be replaced in the next year to year and a half. He noted that vehicles were not covered in the Senate Bill. He commented that at some point land will not be available and impact fees will stop.

**Chip** suggested that the community needs to find new funding for the Sheriff's Department since impact fees will not be the solution.

**Sheriff Chris Hoffman** said it will not be as written. He said that he has to find revenue in our tax base to pay for demanded services. He noted that it costs money to respond to the current demand.

**Ben** said he responded to the triple homicide in Florence a couple years ago. He noted that when he arrived, one lady still had signs of life so they called the Sheriff. He explained that a deputy did not arrive until 35 to 45 minutes later and the backup requested did not arrive until an hour had passed. He said that he did everything he could to support raising the budget and taxes. He noted that the County really needs to increase the budget for officers and patrol cars.

**Sheriff Chris Hoffman** said that was not tonight's discussion, but noted that the County is suffering from an emergency medical service problem. He explained that at the north end of valley, they are served by a Missoula ambulance service.

**Ben** said that the volunteer Fire District will need full-time paid staff soon, although they are nowhere near that now.

**Sheriff Chris Hoffman** said that they were not, but noted that it is pretty easy to pass a fire levy.

**Gary** asked James if impact fees are for capital improvements and those must have a minimum of a 10-year lifespan.

**James** said that is correct, but the Board is talking about mitigation fees, not impact fees, so they are not limited by that.

**Ben** said that he saw 11 mule deer bucks on the Aspen Springs property Saturday morning. He commented that he saw no sign of elk and asked John Vore if that was due to the fact that the last 3 or 4 winters were mild.

**John Vore** said that the ridge they are talking about is sagebrush, grassland that elk and mule deer favor in the winter. He said he saw elk in spring flights within 1 ½ to 2 miles of the property. He noted that the winter range maps were drawn up in 1999, and it was known that if the lands were not constantly occupied elk habitat, they were certainly suitable for elk. He said that whether or not elk are there in the winter is up for question, but he did note that it will be used by elk in harsh winters.

**Les** asked if there are studies which indicate that just the presence of human activity causes elk to readjust their active grazing areas. He asked if over 20 years, they would be long gone.

**John Vore** said that the impact of development is greater than its footprint. He noted that domestic dogs range up to 2 to 3 miles away from subdivisions and research has

tracked the same dog 2 miles apart in the same day. He said that he is not against high density, but with that many people around, the impact to wildlife is greater, especially with people on trails.

**Gary** said that one of the mitigation suggestions was for the developer to remove the lots that were on top of the wildlife range. He asked if that was accepted, would it mitigate the winter range.

**John Vore** said it would not mitigate it 100%, but it would mitigate it a bit. He said that the 28 lots encroach into currently undeveloped winter range. He noted that there will still be 600 lots and they will still create impacts.

**Dale** asked the County Road Supervisor if he assesses impact fees and if the developer puts in internal subdivision roads that meet county standards, why the County does not maintain the roads after that.

**Dave Ohnstad**, Ravalli County Road Supervisor, said that there are 2 roads in the area that are currently County-operated and that will be operated by the County in the future. He said that interior subdivision roads are not accepted because they do not have connectivity and have no broader public function than to serve those homes. He noted that the County currently operates Lower Woodchuck Road to its terminus in Missoula County.

**Dale** said that the School District wants impact fees too. He noted that John McGee said his school buses will not pick up students on roads that are not county-maintained.

**Gary** explained that there are no impact fees in Ravalli County and that road fees are called pro-rata.

**Dale** asked if the County had discussed getting impact fees.

**Gary** said they had, but not for this subdivision.

**Ben** said it was a long walk from the beginning of the subdivision to the end of it. He asked the Superintendent if he would pick up students in that subdivision.

**John McGee**, Florence-Carlton School District Superintendent, said that if the subdivision has roads built to county standards, they would look at getting a bus in there safely. He said that he will not run a bus on roads that are not county-standard.

**Ben** asked Nick Kaufman if the subdivision map shows bus stops.

**Nick Kaufman** noted that all the roads in Aspen Springs will be built to AASHTO standards.

**Ryan Salisbury** said he did not design specific bus stops. He noted that turnouts were reviewed, but were not designed with the intent of being bus stops. He said that there are a couple pullouts that could be used, but he will leave that up to the people who create bus routes.

**Ben** asked how far it was from the entrance of the subdivision to the last cul-de-sac.

**Ryan Salisbury** said it was about a mile.

**Dan** said he will recognize the developer and his agents to continue their talk.

**Nick Kaufman** said he was from WGM Group and would like to present four short items and a summary.

**Ryan Salisbury** said that last week he submitted written reports by consultants and can answer questions about those if necessary. He showed a map of the subdivision with streets that had a design speed of 20 miles per hour or less. (See Attachment I, Roads with Design Speeds of 20 mph or Less) He noted that in reports, there were flash flooding concerns with the 28 lots above and 3 additional lots in the south central region of the subdivision. He explained that Ravalli County is not known for flash floods and if they do occur, they will happen toward the bottom of a drainage basin. He noted that the report submitted last week showed calculations to prove the lots were not in danger. He said that the lots in the 100-year-flood range were placed 30 feet away from the dangerous areas. He noted that the subdivision has drainage basins, and drainage easements could be created. He noted that streets and storm drainages are planned. He said that storm water will be retained in a pond. He said he did not agree with storm water concerns; his concerns when building a home is that water has a routing path, which was taken care of in the grading plans, and that the footings are on native soils.

**Gary** commented that the soil reports from Staff indicated that there were severe soils in Aspen Springs, but the developer's reports did not indicate severity. He asked WGM Group what type of construction techniques can be used to mitigate for severe soils.

**Ryan Salisbury** said that at final road design, a soil sample is taken. He said that for Phase One, they will test the soil for an R value, which determines how deep of a road section would be created. He said that sloughing soils are not present on this site. He said that the soils were marked as severe because of the slopes. He noted that they stayed off slopes greater than 25%. He said that the developer provided a grading plan and footings. He said that he was personally there for 50 test pits and he was confident in the soils on this site. He noted that since the subdivision regulations prohibit development on steep slopes, they might use geo-textile fabrics.

**Gary** asked if soil samples are taken for home building sites.

**Ryan Salisbury** said they could be, but the process was not typical. He said there might be one test sample for the entire subdivision. He said if an engineer has concerns with severe soils, they could do a footing drain or create a wider footing.

**Jim Sylvester** noted that he did not factor in a homestead exemption of 31%. He noted that the full taxes for an average home would be \$3,519 and the school tax would be \$557.

**Ben** asked about taxable values.

**Jim Sylvester** said that the State Department of Revenue gives the formula. He said that he started with the market value of \$170,000, factored in the homestead

exemption, and came up with the taxable market value, which would be \$117,300. He noted that the current tax rate is 3%.

**Ben** asked about the other taxes.

**Jim Sylvester** said that he did not have ready access to the specific levies in the Florence area, but said he could have it the following week.

**Ben** said he owns a home in Florence that is worth significantly more than the example from Aspen Springs, and he said he thought his school taxes were lower than that. He said that his total taxes were \$1,500.

**Nick Kaufman** said that the State of Montana contributes to schools on a per-student basis. He said that the developer could contribute up to \$300 per lot to the schools, if they could have a credit if impact fees were adopted. He also said that if mill levies were passed, the homeowners would pay for that as well.

**James** said that he has advised the County Commissioners and Paul Tischler that if subdivision exaction is required as a condition of approval and impact fees are later adopted, that the County should give a credit for fees already collected.

**Nick Kaufman** said he was told by someone that he has never seen elk on the property. He said that in 1996, there was a record snowfall and no elk used the property.

**Steve Fisher**, a wildlife biologist, said that Mr. Schrage ran sheep up on the property, but there have never been elk that low on Lower Woodchuck Road. He noted that at the July 5 hearing, a man who had 40 acres on adjacent property said he had not seen any elk signs. He noted that there were 371 lots approved to the east of the subdivision and 240 more lots were under review by Staff, totaling 611 lots. He explained that FWP said that the straight, diagonal line on the northeast of the subdivision is diagrammatic at best. He said that someone would have to look at the landforms to quantify that elk were there. He remarked that the developer left the entire ridge to the east part of the property as undeveloped. He said that the presence of people does not preclude use by elk. He noted that those areas left open in the subdivision will remain open forever. (See Attachment J, Elk Winter Range Existing & Proposed Development)

**Gary** said that the range includes mule deer. He said that mule deer are in the area and some wildlife occupies that land. He asked to see an open space map that does not include drain fields, drainage basins, slopes greater than 15%, or the natural gas pipeline.

**Nick Kaufman** explained that there are three types of open space; the first is natural open areas which include the long, open ridges (primary mule deer and elk habitat), and the long draw. He noted that their function is to include open space, wildlife habitat, and vegetation. He explained that buried gas lines do not inhibit open space, nor do buried drain fields. He said the other types of open space are dedicated parklands given to Ravalli County, and common areas. He explained that drain fields are buried features and many people have drain fields in their backyards. He drew playing field areas and areas open to the public on a map. He explained that public

areas will be maintained grasses, but they will not be dedicated to the County. (See Attachment K, Revised Lot Layout Exhibit with Markings)

**Gary** asked how much of each area there is compared to the entire development space.

**Nick Kaufman** said that of 393 acres, 140 are open space, which is about 42%. He noted that the developed park area is 16 acres. He commented that other developments provide cash-in-lieu of parkland and some have common areas. (See Attachment L, Elk Winter Range Habitat Map with Markings)

**Gary** asked if the open space area will be preserved through an irrevocable agreement or through conservation easements.

**Nick Kaufman** said they have not discussed those options, but they could come into play if there were advantages to them.

**Les** said the developer spent time at the last meeting talking about trails. He asked if the developed trail system will be open to the public.

**Nick Kaufman** said it will not be closed to the public. He explained that the Road Supervisor said that Ravalli County is no longer accepting roads. He said that roads, common areas, and trail systems will not be closed to the public. He remarked that they are subject to the developer and homeowner's association, who have the option of closing parks and trails to the public if there is vandalism.

**Dale** asked where the Orenco filters will be run.

**Ryan Salisbury** explained that the footprint of an Orenco station is 4 feet by 4 feet. He noted that 3 of those are needed for 50 homes. He said that the recirculation tank holds about 15,000 gallons. He said that the developer has to dedicate enough drain field area for replacement. He noted that they will all be underground, although he does not know the acreage that will be used.

**Dale** asked where the systems would be. He noted that at another subdivision he visited, the systems were exposed and were 6 feet by 10 feet.

**Ryan Salisbury** said that his systems would be 4 feet by 4 feet with separation between them. He explained that there are a couple different ways to install them, but if drain rocks are provided, they can be completely buried. He commented that they will design manholes flush with the grass.

**Nick Kaufman** noted that parks in the subdivision are in excess of eight acres.

**Ryan Salisbury** said he received the Park Board recommendation late in the subdivision process. He said that one of the cross sections of the trail along Lower Woodchuck Road that he presented at the previous hearing would not work because of site constraints. He noted that the developer is excited and willing to create a trail, and there will be one, although it will not be detached from the road. He asked the Board how to handle the issue as they finalize this design without this becoming new information. He noted it was unlikely the neighbors of the trail would grant an easement for creation of a detached trail. He explained that he found out today that

there was no safe way to provide for a detached trail. He said that the bike path would be an extended shoulder.

**Bob** said that was very unfortunate.

**Dale** remarked that there is no shoulder on the road now.

**Ryan Salisbury** said WGM Group has been talking with David Ohnstad of the Road Department and that they had submitted revised lot layouts for expanding the park. He noted that PCI is reviewing it and told him verbally that there were not any major concerns.

**Ben** asked if the detached trail will not work in some places, but will in others.

**Ryan Salisbury** said that was correct. He said that the path will be directly adjacent to the road and at a similar elevation to the road. He noted that Highway 93 had constraints as well and higher volumes of traffic require more separation. He said that the likelihood of a pedestrian accident is low.

**Ben** asked how much of the area from the exit of the subdivision to Eight Mile Creek Road would be cut-and-fill.

**Ryan Salisbury** said about 50% would be.

**Ben** asked if the large pond in the eastern corner of property is part of Aspen Springs or not. He noted that fire helicopters dip water out of the pond.

**Nick Kaufman** answered that the pond is on an adjoining property owner's land, which is being transferred to Big Sky Development. He noted that their plan is to cluster homes on the eastern portion of the property.

**Perry Ashby** said that he received comments from the Park Board late in the game regarding the trail system. He noted that he is willing to do whatever is necessary within reason, and as long as it is safe. He commented that although Reserve Street has a sidewalk, people do not use it due to their perception of safety. He said that people are more likely to use trails in subdivisions because there is a sense of separation and security. He said that they are dealing with a constrained area on Lower Woodchuck Road, even though the road easement is 60 feet. He asked for help and direction.

**Nick Kaufman** said that this completes their new information and asked to give a summary at the end of public comment.

**Ben** said that he would rather see a trail than no trail because then people will walk on the edge of the road. He said that the Board approved some subdivisions where the distance between the road and the trail was a yellow line.

**Dan** said that the Board will specifically address this topic in their deliberations.

**Karen** noted that Staff has a confirmed possible hearing continuation date of Monday, July 24, at 7:00 p.m.



The Board indicated that there would be a quorum, although the entire Board could not attend.

**Karen** said she had received a 3-minute rule waiver from Candi Jerke and also that a Board member had asked if this development meets the definition of "cluster development."

The Board agreed they would like to know the definition.

**Karen** said the question was if Aspen Springs meets cluster development rules under state law. She explained that in order to have a cluster development under state law, the County has to have regulations which establish the size of lots, number of clusters, and minimum area to be preserved. She noted that Aspen Springs is not a cluster development under state law because the County does not have any cluster development regulations.

**Dan** noted that Candi Jerke requested a speaking time of 10 minutes.

**Ben** motioned to grant her 10 minutes.

**Dale** seconded the motion.

**Candi** indicated that she would be giving a rebuttal.

The Board voted (9-1) to approve Candi's waiver request.

**Dan** noted that the Board is reopening the public comment portion of the meeting and the 3-minute rule is in effect. He asked the public to limit comments to new information from tonight, not to repeat comments, and not to read comments to the Board.

**Candi Jerke** asked if she could pass out some sheets she had previously given to the Board. (See Attachment M, History of Ravalli County Valuation and Attachment N, Calc New Market Value - 2003) She noted that Jim Sylvester forgot the Homestead Credit in his previous calculations. She said that now he has corrected that part of his report, but he forgot the phase-in. She commented that she is an appraiser with the State of Montana and has worked in Ravalli and Missoula Counties. She said that in 2002, an average home in the county was \$132,100. She noted that reappraisals are only done every 6 years or so. She asserted that Jim Sylvester missed the phase-in, where the state government phases in taxes at 1/6 per year. She noted that from 2003 to 2008, the taxable value moves from \$2,824 to \$2,624. She said that over 6 years, a normal home, if the mill levy does not change, will go down in value. She said that since Wesmont said they would create affordable houses, she used \$2,700 as the taxable value. She explained that since Florence passed a mill levy, school taxes will increase. She noted that for an average house, the School district will receive \$475, the Fire District will receive \$9, the County will receive \$311, and out of the County's money, public safety will receive \$56. She said that the variance requests were made to be able to provide affordable housing. She said that people from Missoula County will be better able to qualify for the housing in Ravalli County since qualifications are based on the prevailing income in the County. She said that people in Ravalli County would not be as easily qualified. She noted that the deed restrictions and covenants do not say anything about affordable

housing and Perry can construct whatever houses he wants. She said that Jim Sylvester's figures were off and taxes are about ¼ of the figures he used. She noted that for the first 38 houses to start paying taxes, they would have to be built in 2007. She explained that houses are assessed on January 1 of each year and are assessed at however complete they are on that date. She said that if someone built a house today, they would not receive a tax bill until November 2007. She noted that taxes are always a year or two behind, which is why the County is considering impact fees.

**Dale** asked where he could buy a \$132,000 house that is livable.

**Candi Jerke** said that is what an average home sold for in 2002. She said that there are a few out there, but they are mostly in towns. She said that Aspen Springs really does not offer affordable housing.

**Chip** said that he frequently hears that people pay for growth through taxes. He remarked that taxes are a function of the appraisal process. He asked that if the legislature used the process to even out taxes, then have they limited Sheriff Hoffman's budget due to the appraisal process.

**Candi Jerke** said that was true.

**JR** asked how this information differs from that of any other house in Ravalli County.

**Candi Jerke** said it was all the same process and taxes are based on market value.

**JR** noted that Ben said his property would be taxed at less even though it was more expensive. He noted that Ben owns multiple acres and that lands with agricultural exemptions are not taxed the same as a home on half an acre.

**Candi Jerke** said that any property over 20 acres gets a tax break, especially those with agricultural exemptions.

**Steve Hall** said that impact fees are just another funding tool and they will promote them as such. He said that Commissioner Greg Chilcott said impact fees were not a panacea. He said that he has an email from Sheryl Consort which said that DEQ has sent Wesmont 4 denial letters. (See Attachment O, Email from Sheryl Consort) He read from Section 3-1-4, Finding 7 from the County's Subdivision Regulations, which discusses negative effects of a subdivision that could be mitigated. He discussed letters from Jim Lynch from the Montana Department of Transportation and Governor Schweitzer, which state that there is no mitigation proposed for Highway 93 and Eastside Highway. (See Attachment P, Letters from Jim Lynch and Brian Schweitzer) He said that he thinks weed infestations have contributed to lack of elk on west-facing slopes in the area. He explained that leafy spurge causes ulcerations in the mouth and throat of an elk. He said that although there are not elk there now, he hopes that the weeds will subside and wildlife will come back. He remarked that leafy spurge cannot be stopped, but it can be controlled.

**Sarah McMillan** said she is an attorney who represents Florence Coalition Against Aspen Springs and Bitterrooters for Planning. She mentioned Sections 8-1-3 and 8-1-7 in the County's Subdivision Regulations. She discussed a Montana Supreme Court case which said that variances are to grant relief for property owners by the strict

following of the law. She said it was decided that three conditions must be present for the granting of a variance: (1) the variance must not be contrary to public interest; (2) literal enforcement of issues like zoning must result from undue hardship from conditions unique to the property; and (3) the spirit of the ordinance must be observed and substantive justice must be done. She read Section 8-1-3 and said that the variances have to be minor deviations. She said the issue is that the variances requested are not from undue hardship and do not satisfy all of the variance criteria, not just the 5 criteria.

**Gail Knox** said she was from Corvallis and that the Board is putting the cart before the horse. She said that the County does not have subdivision regulations and they do not have assessment of water capacity or carrying capacity for that area, let alone the County. She said that the County does not have an accurate understanding of sewage capacity or alternative plans to do that. She recommended that until the Board has those things under control and understood and they hire a planner who understands regional planning, they need to stop looking at developments and sit down and decide on zoning, water, sewage, and various types of developments.

**Kathleen Driscoll** said to clarify her statements at the July 5 meeting, the mills are \$62,245. She noted that Missoula County charges two and a half times more. She noted that earlier today, the County Commissioners decided not to put \$25,000 into an impact fee study because the state legislature might look again at Senate Bill 185. She suggested that the County does not have a lot of income now and they are putting impact fees even farther into the future. She explained that the legislature holds down how many mills the County can charge out. She told JR that all houses are not the same in the first 3 to 6 years.

**Glen Kinsley** said he has lives in a small subdivision in Stevensville since 1977. He said that his dog ran loose and he did not mow his weeds. He said he realized everything he did had a negative impact on the neighborhood and community. He said that nobody has addressed how many dogs are moving in. He noted that cats love birds and catch them and that dogs can eat wildlife. He said that he has heard people complain about 5-acre weed patches. He said that although 5 acres is too small to farm and too big to mow, his neighborhood is nice and people have horses, raise goats, and use the land. He said that the subdivision will have an impact on the Valley's agricultural base. He also suggested that dogs could make a mess of someone's sheep.

**Dale** told Gail Knox that the County's Sanitarian told him that the State of Montana reviews subdivisions this size because the County cannot handle them. He noted that the applicant has to prove they have water to the DNRC. He said that he has dug holes on the property and agrees that it is prime property, but does not know if it can handle such a large capacity.

**John Carbin** said he was at the previous meetings and said that the Board is admittedly overwhelmed with the volume of material facing them. He noted that one result is that they have no time to work on long-range planning or zoning, which will alleviate a lot of difficulty and friction the County is now facing. He said that he believed planning should be part of the deliberation. He commented that the Board might recommend slowing down somehow due to the onslaught of worthy and sometimes difficult development proposals.

**Pam Merwyn** said that a lot of people who moved here came here for beauty, wildlife, and to keep down stress. She said that anything trying to get onto next election's ballot to save open space will be a moot point if these subdivisions are passed. She said there will not be land for builders to build the next 400 houses because they will already be consumed. She told the developer that he has lovely plans, but they just do not belong here. She said that this is one of three subdivisions that Wesmont is doing in the Valley. She commented that after the entire Valley is covered in houses and some have been taxed out of their homes, the County still will not have the money to take care of services. She said that the amount of subdivisions being reviewed is so large that the Board cannot handle the volume and it is not fair to Staff. She proposed a moratorium to gear up and get everything prepared to handle large subdivisions. She remarked that if the developer had to dig that deep to find water, they will not have enough to sustain the subdivision. She noted that subdivisions created in the mid-1990s pushed back wildlife. She noted that young families in the Valley do not exist because they leave. She said when they return, what they loved about the area is gone. She said that it is a misnomer to say that people own homes because all they own is a mortgage. She said that the banks will get a bone on these subdivisions. She said a lot of people moved here to work in the construction industry. She explained that when the Valley is built-out, there will not be jobs left for construction workers. She recommended slowing down growth so that the infrastructure can handle it.

**Gail Knox** said she did not understand what Dale said about the state.

**Dale** said that the State reviews water requests and the developer has to prove to the DNRC that they have water.

**Cam Stringer** from Geomatrix said that the applicant has to meet two requirements: prove public water supply with the DEQ for a permit and prove water supply to the DNRC for water rights. He said for the DNRC, they have to produce maximum day demand and for the DEQ, they have to produce the maximum day demand with one well out of service.

**Gail Knox** asked if there were a limited number of wells for the development.

**Cam Stringer** said that they also have to test each individual well at 1 ½ times its capacity. He noted that wells will be on a distribution system.

**Gail Knox** asked if the wells will affect neighbors.

**Cam Stringer** said they will not and that they are waiting for production well data.

**Gail Knox** asked if the subdivision will be handicapped accessible.

**Dan** said that public comment is closed for this meeting and will reconvene on July 24 at 7:00 p.m.

**Nick Kaufman** said that regardless of Wesmont, both TischlerBise and the State Census data indicate that 400 to 500 households are created each year in the County. He stated that 1,074 lots were reviewed by the Board over the past few years. He alleged that Aspen Springs is the focal point of a discussion that should have been done a long time ago. He asked if the County's residents will be housed

in 1-acre parcels, or in another pattern. He said that rural parcels next to smaller lots can be enjoyed regardless and it does not diminish the rural lifestyle. He noted that Riverview Orchards' density was doubled from 10-acre tracts to 5-acre tracts. He explained that there is sprawl development on Highway 93. He said that he wants to look at dispersing housing needs for population growth with developments like Aspen Springs. He commented that the development is suitable physically and culturally.

He noted that every single fee charged to a developer is forward-shifted to the homebuyer. He said that impact fees tax a population that is not here yet. He said the homebuyer will pay the \$300 school donation, \$100 sheriff donation, \$800 roundabout donation, and Highway 93 mitigation, and pay for it twice on a 30-year mortgage. He said that if new housing stock increases because of impact fees, the other neighbors receive a windfall gain because house prices rise with the market. He asked the Board to be careful with impact fees because they are not the best way to get money. He said that only \$56 of an average home's yearly taxes goes into the public safety fee; he noted that Wesmont volunteered to almost double that by offering \$100. He said that the new home pays nearly 3 times to the schools than what an existing home would pay. He explained that the Aspen Springs homeowner will pay state property taxes, and the State will give back some of the money to the school based on the number of students enrolled. He said that the new mill levy will help pay for the school. He reported that Wesmont proposed \$300 extra dollars, plus future homeowners will be subject to mill levies. He said that the Florence-Carlton School currently has problems. He asked what will happen when TischerBise says they get 400 new homes in Florence.

He asked if the Board wants to put up something that will eat the land. He said that the cost of removing 50+ lots suggested by FWP will be over \$1 million. He told the Board that this is not crucial winter habitat. He noted that the habitat is already diminished by the parcels around the property. He explained that the County does not have enough housing. He noted that over the past 3 ½ years, the average lot size has been about 2 ½ acres. He noted that the 77% of government land will always stay as open space, but to keep agricultural lands, the County will have to use a different pattern than agricultural-consuming lots. He said that the elk winter range is marginalized by the area around the subdivision. He noted that their two biologists said that it was not elk winter habitat. He asked the Board to weigh human needs and animal needs before taking away \$1 million. He said he spoke with John Vore, who has a general map of the elk habitat. He noted that Aspen Springs is on the edge of that line.

He said that although the Sheriff needs new staff now, Wesmont cannot do anything about that. He noted that Wesmont offered a satellite office and \$100 per lot. He declared that their voluntary mitigation is not limited to capital improvements. He said that if it becomes a habit of developers to contribute to the Sheriff, it might become a source of revenue for the County.

He said that about 40% of the homes in Aspen Springs will be affordable; the rest will be average or above-average homes. He noted that the lots recommended for removal are the larger lots. He explained that the affordable housing meets State Board of Housing requirements. He said that only one cat and one dog will be allowed on the lots, which will be enforced by the homeowner's association. He noted that this is the only subdivision that Wesmont is working on in this County. He commented that this subdivision should be a catalyst for the County. He said that

this land shows it is physically capable of providing a water system, sewer system and transportation system. He said that Wesmont demonstrated the ability to work with the School District and Sheriff. He said that the Board now knows the land is capable of being developed and that it is suitable for development.

**Stuart Brandborg** asked if people at this meeting can examine the documentation submitted tonight and offer testimony at the next meeting.

**Dan** said they could.

**Stuart Brandborg** said he represents Bitterrooters for Planning and said that if the Board approves the subdivision, they will open the gates to 3 to 5 other subdivisions that will destroy the way of life in the Valley. He noted that some 600-700 people have testified about what they want to preserve. He asked the Board to get a handle on the process through interim zoning. He said that will give the Board a year or two to stop the proposals, gain Staff, and let the Board get their feet on the ground to assess what they really face. He asked the Board to take this into account because they cannot face a tidal wave. He said that people will appear, speak from the heart, and ask for relief. He said that the County is not in a housing crisis. He said that Aspen Springs is an effort into stampeding the Board into making a decision before they are ready. He asked the Board to consider interim zoning.

**James** said that he heard testimony tonight from Nick Kaufman and Steve Fisher that referenced a map that seemed to call for consideration of cumulative impacts. He said he was advised that cumulative impact review was not appropriate.

**John Tabaracci** said as he sat through 3 public hearings, he heard a lot of people address cumulative impacts. He noted that he has read Sarah McMillan's memo and asked to see James' position in writing before he answers the question.

**James** said he has not given his position in writing. He referred to MCA 76-3-608, which says that the Board will review "a" subdivision and "the" subdivision based on criteria.

**John Tabaracci** said he did not see where that code would out-and-out prohibit discussion of cumulative impacts. He noted that the Board has to consider cumulative impacts on roads.

**James** said that he should review this issue before the next meeting and noted that the Board might want to consider how cumulative impacts are reviewed in subdivisions.

**Nick Kaufman** stated that number 5 of the 6 criteria addresses effects on wildlife and wildlife habitat. He asked the Board to consider his testimony and those of the experts to consider the quality of the wildlife habitat, not cumulative impacts.

**Les** said that the application mentioned a homeowner's association, but he could only find a reference to a homeowner's association six months after the last unit is built. He asked if there was a written document describing the homeowner's association that will go into effect after six months.

**Nick Kaufman** explained that prior to turning over the lands to a homeowner's association, the covenants allow the builder to own the subdivision so it can be developed the way it is represented to the Board and so that it will maintain value. He said that the developer has a primary investment and operates as the homeowner's association until he turns it over as lots are sold.

**Gary** asked, based on that, if the community is part of the homeowner's association or if the developer is the sole authority while the builder retains ownership.

**Nick Kaufman** said that the developer is the head of it. He noted that a neighborhood is a social system and the developer has to listen to the people in the system.

**Gary** asked if the developer would publish the homeowner's association bylaws so that future homeowners would know the criteria.

**Nick Kaufman** said that when the developer records covenants and files bylaws, they would incorporate the homeowner's association at the same time.

**Ryan Salisbury** asked if it was possible for the Board to ask questions of the developer's agents here tonight. He asked if the agents needed to return to following meetings.

**Dan** said that if the Board accepts further testimony and as the Board deliberates, they will want to ask questions of the consultants.

**Steve Hall** asked if he could give a rebuttal and speak to the Board as a group since he feels he represents the perspective of his neighbors and people he talked to.

**Dan** said he preferred waiting until the next hearing.

**Bill Knox** said he sent a memo to the Board and that he was concerned with public health and safety issues. He mentioned the book Collapse and said that on page 53 of the book, it mentions that the County does not have adequate water and sewage testing. He asked for an independent source to say what the effects of water usage and sewage treatments are. He noted that the waste from the sewage treatment system will eventually go into the Bitterroot River. He asked the Board to ask the County Commissioners for a moratorium on subdivisions and time to look at zoning. He asked them for a better development plan.

**7. Suspend Public Hearing Until Next Meeting**

**8. Next Regularly Scheduled Meeting: July 19 at 3:00 p.m.**

Gunshy Ridge III (Bitterroot Valley Development, LLC) – Public Hearing  
Hidden View Estates Major Deviation (Kearns) – Public Hearing  
East End Lot 1, AP (Kwapy) – Public Hearing  
Centennial Lot 17, AP (K&J Development) – Public Hearing  
Castle Heights (Greer) – Public Hearing

**9. Adjournment: Dan adjourned the meeting at 9:48 p.m.**





**Ravalli County Planning Board  
Meeting Minutes for July 24, 2006  
7:00 p.m.**

**First Interstate Center, Ravalli County Fairgrounds, 100 Old Corvallis Road  
Hamilton, MT 59840**

**Continuation of Public Hearing**

**Aspen Springs (Wesmont Builders/Developers, Inc.) Major Subdivision and Eight Variance  
Requests**

**1. Call to order**

Dan called the meeting to order at 7:04 p.m.

**2. Roll Call (See Attachment A, Roll Call Sheet)**

**(A) Members**

Mary Lee Bailey (absent – excused)  
Dale Brown (absent – excused)  
Ben Hillicoss (present)  
Dan Huls (present)  
JR Iman (present)  
Chip Pigman (present)  
Les Rutledge (present)  
Lori Schallenberger (present)  
Gary Zebrowski (present)

Park Board Representative: Bob Cron (absent – excused)

**(B) Staff**

Benjamin Howell  
Karen Hughes  
James McCubbin  
Renee Van Hoven  
Jennifer De Groot

**3. Approval of Minutes**

Dan asked if there were any corrections or additions to the minutes from July 19, 2006. There were none. The minutes were approved.

**4. Amendments to the Agenda**

There were none.

**5. Correspondence**

Dan noted that the Board had received additional agency and public correspondence. (See Attachment B, Agency Comments received at or since the July 17 Public Hearing; Attachment C, Public Comments received at or since the July 17 Public Hearing; Attachment D, Letter

from Sarah Roubik; Attachment E, Letter from Andy Roubik; and Attachment F, Letter from Sheriff Chris Hoffman)

6. **Disclosure of Possible/Perceived Conflicts**

**Dan** said that it was not necessary to repeat the conflicts already stated at previous meetings.

7. **Public Hearing – Continued from July 17, 2006**

(A) **Aspen Springs (Wesmont) Major Subdivision and Eight Variance Requests**

(i) **Three Minute Rule Waiver Requests**

There were none.

(ii) **Public Comment on the Subdivision**

**John Tabaracci** said that James McCubbin asked his opinion on cumulative impacts at the last meeting and he has since reviewed a memorandum from Sarah McMillan and spoken with James. He said he concluded that the term “cumulative impacts” is a misnomer because it deals with additional or supporting evidence. He said that it is appropriate to look at past and present development, not just at Aspen Springs in isolation. However, he said the Board should not look at lands which could be subdivided in the future because that is too speculative. He said that this discussion stemmed from comments made by members of the development team about elk and potential developments surrounding Aspen Springs. He asked to withdraw those comments and said the better answer is that there is no evidence of elk on the property.

**Dan** said the Board will adhere to the 3-minute rule and will now accept public comment.

**Jason Rice** said he represented the newly formed Montana Land Alliance, which seeks to protect property rights. He contended that much of the evidence presented as public testimony has not been relevant, but the developer has submitted evidence supported by science and facts. (See Attachment G, Letter from Montana Land Reliance)

**Steve Arno** said he spoke at Florence and noted that the County is one of the fastest growing in the state. He explained that there is now a broad interest in the planning process, as witnessed by the Wal-Mart zoning and the Growth Policy. He said that the Sheriff and Florence-Carlton School Superintendent made it clear that they are impinged by the present state of affairs and to add an urban-style subdivision in a predominately rural area is a departure that the County cannot afford. He also noted that the highway cannot handle the traffic. He said that if this subdivision is approved, it opens the door to a lot of the same. He recommended a moratorium on these large-scale, high-impact subdivisions.

**Margaret Hammerberg** said she lives on Lower Eight Mile Creek Road and she expressed concerns about high-density subdivisions. She explained that historically, they become rental properties; rental properties have renters that have no ownership equity and investors attempt to do as little as possible to maintain the

houses. She suggested that in those situations, the subdivision will be composed of people with varying income levels and the owners cannot discriminate to rent or sell only to first-time homebuyers or lower-income families. She said that situation reduces everyone else's property values. She noted that the Sheriff mentioned problems providing service that goes along with high-density subdivisions and the entailing crime. She said that recently, a vehicle came down Eight Mile Creek Road, went into a ditch, hit her electric pole, and the occupant left the scene of the crime. She reported that it took an hour and a half for a highway patrol to arrive and no deputies were available. She said that law enforcement response time is bad and it will get worse. She contended that the subdivision will cost the county and the taxpayers far greater than the revenue received from property taxes. She noted that the Florence-Carlton School District cannot get bonds passed now to do routine maintenance on the schools because people cannot afford those taxes. She expressed the difficulty she has pulling out of her driveway now while the road is a 2-lane. She said the expansion will take part of her property as well. She said she does not have problems with the land being developed, but with the high-density housing that reduces surrounding property values. She asserted that quality homes on 10-acre lots will bring more money than 5 of the lesser homes in Aspen Springs would bring and that the larger lots are better for the developer, the community, and the County.

**Sandy Frick** said she owns 80 acres to the north of Aspen Springs and said that this proposed density is extreme and unacceptable. She said there is a possibility of the water tables lowering, extra traffic, school overcrowding, and lack of law enforcement. She stated that variances should not be allowed in a development of this magnitude, but the developer should have to meet all state and county requirements. She said that the first variance should not be granted because regulations change and the developer is trying to stick in his subdivision before they do change. She said that the second variance is for safety and asked why the developer does not want to connect with adjacent areas. She said that the third variance about the gas pipeline is a public health and safety issue. She said that the seventh variance is not necessary because Lower Woodchuck Road is fine the way it is. She said that the developer wants the public to bear the costs of Eight Mile Creek Road as requested in Variance 8. She alleged that the developer and his consultants would not support a development like this if they lived next door to it. She said that the hydrologist said the subdivision would not affect wells in surrounding areas, but she said there is no way that is guaranteed. She said approval of this subdivision will create negative impacts and legal battles. She noted that the Subdivision Regulations are in place to protect public safety and welfare. She asked the Board to strictly enforce the existing rules.

**Sharon Schroeder** said she lives on Lower Woodchuck Road and said that the subdivision makes no sense. She said Aspen Springs should be placed near public transportation, jobs, and municipal water and sewer. She announced that the eight requested variances are unreasonable. She commented that the developer will ask for variances during the next 22 years, which negates the planning process. She noted that the developer is proposing a fee to mitigate impacts to the schools, but that money spaced over time does not allow the school time to improve their facilities and the value of that donation in 20 years may decline. She said that the few families on Lower Woodchuck Road like the road as it is and the current residents should not have to pay for roads. She commented that the developer wants to avoid opposition of his neighbors by proposing Variance 2. She said that

building within 25 feet of a high-pressure gas line is disastrous. She asked the Board to deny the variances. She said that people need places to live, but a high-density subdivision does not belong in that area. (See Attachment H, Letter from Sharon Schroeder)

**Jim Schroeder** said he lives on Lower Woodchuck Road and he opposes the subdivision because it is detrimental to the Six Criteria. He said his biggest concerns are effects on the natural environment and public safety. (See Attachment I, Letter from Jim Schroeder)

**Pamela Priem** said she is new to the County and lives in the Hidden Valley area. She said that she formerly lived in Denver, which is overcrowded, and has dreamed about living here all her life. She asked someone to step up and put strict controls on growth. She said that the subdivision does not make any sense because it is in the wrong place and at the wrong time. She noted that there are no jobs to speak of in the Florence area and 10 homes to an acre is a travesty. She said she would rather see reasonable lot sizes of 2 to 5-acre parcels than smaller lots. She noted that if she wanted to live in a high-density neighborhood, she would live in Missoula. She said that the houses are not low-cost because the costs will be high to the people in the County and the costs will be passed on the people who purchase the homes. She noted that the future homeowners will have to pay for monitoring and upkeep of the water treatment system and trails. She asked the Board to consider the arguments made against this development, let reason prevail, and ask the subdivision to be built where it makes more sense.

**Howard Newman** said he is a hydrologist retained by the Florence Coalition Against Aspen Springs. He said that this subdivision reminds him of being invited to eat an apple pie, but upon arrival sees only some of the ingredients for the pie; at every meeting, there is new water information. He said that the geologist and driller hired by the applicant have done good work, but no one knows what the impacts will be to the Eight Mile wells. He remarked that a neighbor, Mr. Foss, lost his water twice during the testing and pumping of one well. He said although they are pulling water from the deep channel, if the water is connected to Eight Mile water, there will be drawdown effects. He said they might even end up with a trough, a cone of depression that might cause sewage to affect other wells in the area. He said that the developer abandoned wells, as he should have, but noted that it would have been better to continue monitoring the wells to see how they affect sewage. He asked Nick Kaufman how many times they submitted their non-degradation analysis and noted that all of them have been rejected. He said that the subdivision has not passed muster yet and area residents will have problems with water.

**Marilyn Owns Medicine** thanked the Board for reopening public comment and reiterated that the six criteria is not the only review criteria for subdivisions. She reminded the Board that the developer is not required to sign a full-disclosure statement and suggested that the consultants know things that they have not disclosed. She reminded the Board that they enforce the Subdivision Regulations and protect the people and their property rights. She said she was dismayed because she told people that public comment time was closed.

**Linda Cardenas** said she lives in the Lone Rock School Area and is concerned about diversion of groundwater and impacts of flow to the Bitterroot River. She asked if hydrological studies have been reviewed by an independent party. She

asked the Board to require Aspen Springs to have a municipal wastewater treatment plant. She remarked that allowing this subdivision and its variances is like playing a wild futures market with public resources. She asked what would happen if Montana decided to enact a groundwater use restriction and the developer ends up with a 500-household water use permit. She said that developers should look at what they could reasonably build in three years and not be granted blanket approval. She said she would rather see a new regional community college created by her taxes. She asked the Board to look at cumulative impacts and consider enacting interim zoning. (See Attachment J, Letter from Linda Cardenas)

**Marcia Bloom** said she lives in the Lone Rock area and has lived in the Valley for 25 years. She said that the location of Aspen Springs is inappropriate and that the crucial police protection needed cannot be provided. She also noted that traffic safety is an issue and added cars are dangerous. She said that the addition of new students will be a problem for the current school facility. She said that the density of housing will affect the elk. She commented that infrastructure necessary to support the subdivision is nonexistent and that Smart Growth should be adjacent to existing towns. She said that the County may or may not need low-income housing, but it does not need it here, since low-income families will not be able to afford gas prices to commute to Missoula. She explained that lower-income areas need public transportation, services, and jobs. She noted that residents of the Valley will have to suffer the consequences of governing mistakes. She asked the Board not to approve the subdivision. (See Attachment K, Letter from Marcia Bloom)

**Cam Stringer** from Geomatrix said that the only wells that were abandoned were deeper pilot wells being replaced by deep production wells. He said that the shallow test wells will be monitored when aquifer testing is done.

**Jim Rokosch** said he was from Stevensville and presented two documents to the Board for consideration. He noted that the County Commissioners recently approved interim zoning for large retail sales establishments and is considering zoning the Highway 93 corridor, demonstrating their concern for residential areas as well. He asked for development of growth management tools. He read from some sections of the Septic System handout. He noted that some of the decisions on this are in DEQ's hands, but said that a Total Maximum Daily Load will address cumulative impacts of septic systems in rural areas. He also alluded to a Montana Supreme Court decision in favor of Trout Unlimited. He noted that the Supreme Court recognized that there is an impact of pre-stream capture of groundwater. He said that on the Upper Missouri River, if there is an impact to surface water from groundwater depletion, surface rights will have to be purchased to mitigate impacts. (See Attachment L, Septic System Impact on Surface Waters: A Review for the Inland Northwest; and Attachment M, Appeal in Montana Trout Unlimited, et al. v. Montana DNRC and Riverside Ranch Co.)

**Margaret Hammerberg** said she lives on lower Eight Mile Creek Road and asked the Board to stop and think before they vote on the issue if they would want this subdivision in their backyard. She asked the Board not to allow the variances and asked the developer to voluntarily sign a full-disclosure agreement.

**Dick Ellis** said he lives south of Stevensville and although he could suggest the developers to go somewhere else to get rich, he will not. He reminded the Board that while their task is to follow rules, it is also to look out for the welfare of the

County, which includes the general quality of life, which might be impacted by this subdivision. He asked the Board to consider the quantity and quality of water available. He also asked the Board to consider the issue of tax monies that will be used to subsidize this subdivision and provide corporate welfare. He said that taxpayers in the County will pay for services needed to enhance the profits of the developer. He asked the Board to recommend interim zoning and a series of realistic impact fees like those used everywhere else that is rapidly developing in the United States.

**Barbara Ellis** said she had left the County for five years and recently returned. She said that 30 years ago, her professor trusted her with a complex experiment that required special protocol and thoughtful preparation and planning. She said her professor admonished her to take the experiment slow and not to rush the process. She said she failed to take his advice and she spoiled the experiment, which was costly for her and the lab, and she was not given a second chance. She said that Ravalli County is not an experiment and that if things are approved now, they cannot be rescinded later. She implored the Board to listen to the voices of a concerned community and adopt interim zoning. She asked the Board to give careful thought and preparation to any new subdivision in the County because the Board could potentially corrupt the nature of the place.

**Curtis Cook** said he is an attorney in Hamilton and Subdivision Regulations are established to create some semblance of order and intelligence. He noted that Subdivision Regulations are the result of careful thought and consideration of the public and the County Commissioners. He said that the Subdivision Regulations are meaningless when they are subverted by variances. He read from 76-3-506, MCA by stating that subdivision regulations may authorize the governing body to grant variances when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations. He also read from Section 1-e of 76-3-504, MCA that the subdivision regulations must provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques. He noted that the law does not say that the restrictions can be bypassed by variances; it says that they must be prohibited unless the hazards can be eliminated or overcome. He said that State and County regulations are not designed to allow the developer to subdivide in all areas, but to protect public welfare and prohibit subdivisions in inappropriate areas. He also noted that neither this proposed subdivision, nor any other proposed in the County, can be considered "cluster development" because the County has not adopted cluster development standards. He noted that if the roads are not improved, they will not be safe. He said that if the roads are left as they are, County residents will have to bring them up to standards. He said that the density of the proposed subdivision creates problems with water and sewage in the area; water is probably the main consideration in this valley with the number of subdivisions going in. He said he opposed Aspen Springs because it would have too much density and too much impact on our water supply.

**Candi Jerke** said she has been trying to keep the developer from overexaggerating and showing things to his benefit. She said that Gary asked the percentage of open land that does not have drain fields in Aspen Springs. She handed out two map

sets. (See Attachment N, Road Suitability [Natural Surface] Rating for Bitterroot Valley Area, Montana and Attachment O, Potential Erosion Hazard [Road, Trail] Rating for Bitterroot Valley Area, Montana) She said that if there is a rainstorm while the houses are being constructed on erosive soil, the materials will go down the drainage and could end up in the Bitterroot River. She noted that about a third of the property has severe slopes. She said that 2.5% of the total 393 acres will be parks, 10% will be drain fields, and 28% will be hillsides and drainage areas. She said that there were previously covenants on the property that limited one house to five acres, but they were removed. She said she believed wildlife corridors were important, although it would cost the developer \$1 million to remove the upper lots. She said that it will cost the developer \$18 million to develop this subdivision, but at just \$66,000 per parcel, he will make \$42 million, with \$24 million of profit. She said that with 5,866 trips per day, that translates into 488 trips per hour and 40 trips per minute on Eight Mile Creek Road. She asked how all those cars will get onto Eastside Highway. She said she spoke with one of the bus drivers who said she thought she would have problems getting out of the school because she has problems turning out now. She said that Florence does not have a library district, but the developer's library and café are a pipedream. She also said that she does not want to see the natural gas line blow up anyone.

**Sarah McMillan** said she represents Bitterrooters for Planning and the Florence Coalition Against Aspen Springs. She said she wanted to address irregularities in the process. She said that Staff said they did not have enough information to make recommendations when the hearings were started. She said that Staff needs to require sufficient information in the beginning of the public process. She said that a cumulative impact is not a novel concept, but has been litigated at federal and state levels. She said that the Board cannot look at land and say there might be subdivision in the future, but they can look to see if what is proposed is appropriate.

**Pam Merwyn** from Hamilton said that Candi Jerke alluded that by removing five or six lots out of winter range area, the developers would lose \$1 million. She said that Candi's figure of how much the developer could make was low. She noted that even the newspaper has come out with an editorial against approval of the subdivision. She said that cumulative impacts cannot be ignored with that many phases. She said that grandchildren will have to bear the burden of the subdivision. She noted that many children from the Valley leave, but they need to get out and see what it is to earn big bucks and then come back because they cannot find the same quality of life. She said that if developers build at this rate, that quality of life will not be here either. She remarked that no one will come back and no one here will be happy. She said that the subdivision application fees are a joke and other areas charge 3 to 15 times higher amounts than our County. She said it is no wonder the County is being deluged with subdivisions and the Board and County Commissioners have to review them. She said that the impact fees proposed were offered at ridiculous proportions and impact fees are usually based on square footage, with fees ranging from \$50 to \$250 per square foot. She explained that the County needs that assistance until the house comes into full taxable value.

**Steve Hall** said that the loss of natural habitat would not be insignificant as the developer suggested and noted that he has spoken with people who had elk die of starvation in their front yards. He said that the Board has heard pleas from the Sheriff and the schools. He remarked that the County is looking at tax increases and road demands. He said that when they started the opposition group to this

subdivision, they wanted to be honest with the public and the Board. He said he has spoken with clerks at the grocery store that say Wesmont will build Florence a new school. He said he spoke with a fireman who said Wesmont showed them colored pictures of the fire department Wesmont will build for Florence. He explained that neither of these items is in the proposal. He noted that he has not seen DEQ or DNRC approval and if they do receive it, they will have to prove their water usage does not affect stream flow. He asked if the Board can continue for another 6 to 10 months while the developer whittles down the proposal to something reasonable. He said that the Board should have received a complete submittal in the first place. He asked the Board if they will adhere to the Subdivision Regulations or continue allowing variances. He asked the Board to scale the subdivision down to see if high density housing works. He noted that in Los Angeles, where they have high density housing, it creates traffic that is not safe. He said he does not want the developer to start building towns. He noted that the County needs to offer firm guidelines so it does not have to come back and make amends for its actions.

**Stuart Brandborg** said he represents Bitterrooters for Planning and said he appreciates the work the Board does dealing with a complex proposal. He said that the Board is in a position of making an almost impossible decision in the absence of basic information. He said the County is in the jet age with Model T facts. He contended that the County's Planning Department is understaffed and has a severe shortage of technical competence. He noted that some 600 people in written and oral testimony have presented open questions about or against the development and he wants to know why an inordinate amount of time was given to the developer. He said that people here tonight have given the Board sound, hard data and data from the heart, as they are concerned with things we all value. He said that the winds of change are on the Bitterroot. He suggested interim zoning so the County can place procedures, develop regulations, let the County staff-up, and provide for standards to protect landowners. He said that interim zoning gives the County a way out and time to review the proposal. He said that if the subdivision is approved, it will open up a horrible precedent to three to five more subdivision and thousands of homes. He said that the Board is giving up the very opportunity to have new machinery in place to let the County have a fair chance of taking care of the Bitterroot. He asked the Board to listen to the people.

**Howard Newman** asked to address one issue that has not yet been brought before the Board: the proposal to drill deeper wells. He warned WGM and the Board that deeper wells might be detrimental to the Valley because when they pump that much water at 300 feet, they might set up a negative hydrologic gradient. He noted that some occur around the valley in fringes. He said that if there are three wells of differing depths in an area, it can create a negative vertical gradient and water will move up and down. He also noted that nitrates and nutrient concentration can increase if the developer pumps water from deeper wells. He noted that some wells might receive bacteria. He recommended that Cam Stringer monitor wells to see if a negative hydrologic gradient could occur because over a long term, there could be some real consequences.

**Matthew Taylor** said he was the President of the Eagle Watch Property Owner's Association. He noted that one of the most profound testimonies given tonight was a subtle one by John Tabaracci. He pointed out that the developer is asking the Board to disregard cumulative impacts because he knows that they will be



significant. He said that he advocates high-density housing, but the question before the Board is one of timing, degree, impact, and sustainability. He said he does not believe Aspen Springs should be approved at this time due to cumulative impacts. He said there will be significant impacts to the schools. He recommended implementation of interim zoning to give the County a chance to plan. He noted that the Board's decision will be far-reaching. He said that proposals like Aspen Springs can be part of the solution, but in the absence of significant protected open space, zoning regulations, and suitable infrastructure, these mega subdivisions exasperate the problem. He said that proposals like Aspen Springs degrade the valley and all the things that we all hold dear. He concluded that now is not the time for Aspen Springs. (See Attachment Q, Letter from Matthew Taylor)

**James** said that the Subdivision Regulations provide a time for the applicant to make a statement after the end of public comment.

**Dan** said that public comment is now closed and that the developer may make a closing statement.

(iii) Rebuttal

**Nick Kaufman** said the County needs to decide what to do with all the growth and suggested that Aspen Springs is a solution to the problem. He said that the County's own consultants noted that 400 new households are generated in the County a year – 300 of those in the Florence-Carlton School District. He said he has also heard testimony that the subdivision is too dense, in the wrong location, and lacking infrastructure. He noted that the Board approved 52 lots on 70 acres at last Wednesday's public hearing, with a lot size average of 1.32 acres. He said that it would only take 12 similar Board meetings to approve as many lots as Aspen Springs, but those smaller subdivisions create many more impacts than Aspen Springs.

He said that the average daily water demand for Aspen Springs is 280 gallons per minute. He noted that an individual does not need a water right to use less than 35 gallons per minute; those recently approved 52 lots, if using 34 gallons per minute, will consume 1,768 gallons per minute and could take water from the aquifer without water rights. He contended that Aspen Springs is much less consumptive of natural resources. He also noted that the lots created at last Wednesday's meeting will generate the same number of trips as an Aspen Springs lot and those subdivisions will not be clustered or leave open space; they will be a patchwork quilt of 1-acre lots.

He suggested that the County look at options to protect the aquifer and leave ridges open. He said that if they took the parcel of land where Aspen Springs is proposed and created 4-acre tracts, that would only create 100 lots, twice the 52 lots approved at the last Board meeting. He said that last week Karen said that the subdivision did not classify as a cluster development, but he noted that the Growth Policy has a definition of the term in the glossary. He read the definition of cluster development from Montana Senate Bill 479. He suggested that Aspen Springs meets cluster development requirements as described in the Growth Policy. He noted that of Aspen Springs' 393 acres, 42% is left as open space and 16 acres are parks. He explained that Subdivision Regulations require the park donation for lots

under .5 acres to be 11%. He asked the Board to consider the rural-urban interactions in Stevensville and noted that those two groups can co-exist peacefully.

**Ryan Salisbury** said that Sheryl Consort from DEQ did tell Howard Newman that Aspen Springs had been denied four times, but there was also new information submitted. He explained that the non-degradation process has been occurring since January 2005, although they have not had to resubmit fees. He noted that they have responded to all the letters from DEQ. He commented that the subdivision application is information required by the Subdivision Regulations and residents should be confident in the requirements of the County. He noted that all the submittals to authorities were prepared by licensed professionals who stake their careers on them. He said that tonight it is not the Board's responsibility to review engineering criteria. He said that the DEQ and DNRC will review the water issues.

He said that Page 18 of their traffic study shows the level of service analysis and shows how the intersections will operate. He admitted that the Montana Department of Transportation has identified that the intersection of Eight Mile Creek Road and Eastside Highway is a problem and there will be improvements made, possibly before the first lots in Aspen Springs are sold. He noted that all soils are erosive and the Subdivision Regulations prohibit development on slopes greater than 25%. He also noted that the soils on the property are free-draining. He noted that Lower Woodchuck Road is classified as severe soils, but it is in great shape and the surrounding slopes are not erosive.

He explained that the County has not shown support for the Florence-Carlton School District because they voted down three bond issues and noted that the current traffic problems are not the result of Aspen Springs. He said that those problems should not be placed on the back of the developer. He said that there were some subdivisions approved last week that could have contributed to traffic concerns, although this developer has volunteered \$88,000 for the slip lane. He noted that Wesmont was the first applicant to propose money to the Sheriff and the first to up the school donation to \$300 per lot.

**Nick Kaufman** said that the first variance for phasing should be approved because one tenet of land use planning is to look at the whole picture and potential impacts. He noted that the current Subdivision Regulations do not allow the Board to look at the entire picture. He noted that since the subdivision will be built over 10 to 20 years, it will only account for 10% of the housing demand in the Florence-Carlton area. He explained that each phase will be reviewed independently by the Ravalli County Environmental Health Department and DEQ under their current regulations. He also asserted that phasing is in line with the County's Growth Policy. He said that the neighbors in the Riverview Orchards subdivision did not want extra traffic on their streets, so the developer requested the second variance. He said that the access lacks a proper right-of-way but they will provide pedestrian access and an emergency barricade. He said the third variance to create the no-build zone over the natural gas pipeline brings the setback to current Subdivision Regulations. He contended that in regards to the fourth variance, it would allow for cluster development and affordable housing. He explained that only 40% of the homes in Aspen Springs will be affordable housing. He asserted that rural homes can live next to urban. He said that Perry Ashby will speak about the reason he requested the fifth variance for flag lots.

**Perry Ashby** said although he has Staff support on the fifth variance that he should not have been required to submit a variance for the requested flag lots because he is not trying to evade the regulations; if the variance is required, it should be approved.

**Ryan Salisbury** said that the sixth variance asks for the applicant to conform to the newest Subdivision Regulations because the roads have been reviewed and approved by the County's Road and Bridge Department under the newest rules and the applicant would need more variances if he was reviewed under the old regulations. He explained that the seventh variance requests that Lower Woodchuck Road be reviewed under AASHTO standards and the design exception be approved by the Road and Bridge Department. He noted that the County Commissioners recently decided that a design exception should be reviewed by the Road and Bridge Department. He said that the developer will bring up Lower Woodchuck Road and Eight Mile Creek Road to County standards if a latecomer's agreement can be arranged. He asked to defer road improvements, except paving of the gravel portion of Lower Woodchuck Road, to Phase 4. He said that the developer has been working with Laura Hendrix and Larry Schock and believed that the applicant has submitted enough information to refute the removal of Lots B147 through B149. He asked that the Notification of Storm Water Drainage Easements be modified to allow picnic shelters, which he thought would not be detrimental to storm water drainage flows. He requested a credit for improvements already paid for if a RSID/SID is later adopted for the same road improvements. He said that in the southwestern portion of the project, there are half-acre lots proposed that could use individual wells while still using the community sewer system. He asked permission to plat those lots without a beneficial use permit. He said he was worried that the preliminary plat approval for Phase 1 would expire before they received their beneficial water use permit and asked if it took longer to obtain it, that the preliminary plat approval period be automatically extended a year. He also asked for the half-acre lots to be platted without the receipt of the beneficial water use permit.

**JR** asked if the developer is requesting additional water rights than the subdivision has already requested.

**Ryan** explained that those lots are currently included in the water right application. He noted that lots with wells drawing less than 35 gallons per minute would not require water rights. He noted the applicant wants the option to make them individual wells.

**JR** asked how the applicant will follow Montana Law, which says that there cannot be a well and septic on the same parcel that is less than an acre.

**Ryan** explained that wastewater will go to the community system and the lots will have private wells or shared wells.

**Nick** said that John Tabaracci addressed the six remaining issues that Staff mentioned in the Staff Report. He noted that courage is important here: It takes courage to propose change for the development team, courage for those who spoke against the subdivision, and courage for the Board to sift through the testimony and make a decision.

**Dan** proposed a 5-minute recess.

**James** noted that the Board received some additional written comments and asked the Board if they wanted to review them before they reconvened.

**Dan** said the Board would address the correspondence after the break.

The Board took a 5-minute break.

(iv) Board Deliberation on the Subdivision

**James** said that two legal issues that go hand-in-hand arose: cumulative impacts and interim zoning. He said it was not permissible for the Board to consider other proposed subdivisions because they are speculative. He noted that in addition, the state statutes require the Board to look at "a" subdivision and "the" subdivision. He said that the Board has to review incremental impacts, taking everything existing into account, versus considering what will exist after subdivision is built. He said that the County can take impacts into account through varying types of zoning, including interim zoning and voluntary zoning districts, but this is neither the time nor place for zoning. He noted he recommends giving credit to a developer if there is a later development of the same kind that has already been paid. He said he is trying to come up with language along those lines and he will bring it before the County Commissioner's meeting. He said he is not sure he understands the request regarding beneficial water use permits, but believes Ryan is asking for the County to wait to start the clock on final plat until the permits are acquired. He said that request might require a variance application, but the Board cannot grant it now without a variance request.

**JR** asked how the Board envisions this scenario: If the developer improves Eight Mile Creek Road and the roads leading from the subdivision to Eastside Highway, will 100% of that money go to those specific roads, and if so, where does the credit go? He asked if they pay pro-rata, will the money go to that road or to the grader district. He asked if the next person in the area puts in 50 lots and pays pro-rata, does the money go to the grader district or to pave those specific roads. He noted that the applicant is asking to pay a pro-rata share although the Subdivision Regulations say that they have to upgrade the roads to the nearest State Highway.

**Karen** said that the applicant is required to improve the roads to meet County standards. She noted that they are proposing to pay the equivalent of a pro-rata share and the money would go where the County Commissioners saw fit. She explained that Staff recommended that the applicant meet County standards and not be granted the variance.

**James** explained that if the applicant meets the County requirements, there would not be the issue of an improvement district credit because there could not be an improvement district for the same improvements. He said that the issue can only arise if the County accepts payment for an item and there is an RSID for the same improvement. He said that it is not legally permissible to accept the payment twice.

**Gary** asked James if the County Commissioners enacted interim zoning if it would impede progress of subdivisions that are currently in-progress.

**James** said he did not think any zoning now would affect this subdivision proposal.

**Ben** asked James if Wesmont improves Lower Woodchuck Road to the subdivision entrance to county standards and someone farther up the road needed to improve another portion of the road for a subdivision, the later applicant would only have to improve the road from Aspen Springs to the new subdivision. He said that the developer is asking to be reimbursed for that money.

**James** said that he and Karen are working on proposed amendments to the Subdivision Regulations that would provide for an after-the-fact pro-rata payment. He noted that the County Commissioners asked them to pursue the changes, but he and Karen have been busy with other planning projects. He remarked that when an amendment is made, it is his hope that it would apply retroactively. He said that it would apply to any subdivision applicant, no matter when the improvement was made. He gave an example: If Aspen Springs is approved and the roads are improved by the end of 2006, but the Subdivision Regulations were not amended until June 2007, and a subdivision proposal comes in July 2007 that would involve taking advantage of the improved roads, the amendment would require the July 2007 applicant to pay.

**Ben** said he assumes there is a time limit. He said that if amendments to the Subdivision Regulations are approved, it would take care of this request and the Board would not have to deal with the issue. He commented that if the Regulations are amended, the developer will get a refund, but if they are not, granting a credit is beyond the Board's power.

**James** said that they are requesting binding future developers to something related to this subdivision decision. He explained that the County can only bind developers through the Subdivision Regulations. He noted that amendments to the Subdivision Regulations will go through the public process and through the Board and County Commissioners.

**Ben** said he assumes that this amendment or reimbursement would not apply to the pro-rata share.

**James** said that assumption is correct and the amendment would only apply for when the developer actually makes road improvements.

**Curtis Cook** said the reimbursement was asked for in case of a RSID or SID, which is different from a development cost. He noted that if people in the area want a SID to improve something, it would not cover work that had already been done; it would only look to the future. He remarked that it would not be proper to reimburse anyone unless it covers that particular improvement.

**Dan** noted that the Board has received several more pages of written comment and has not had time to review them. He asked the Board if they wanted to review them now and make a decision or extend the hearing.

**Gary** said he would like to understand to which variances the recent agency comments relate and then the Board could postpone addressing those variances

until the next meeting. He said that he would like to address some variances tonight.

**Ben** said that the bulk of comments received are pro or con, although there is a fairly extensive letter from John McGee, the Florence-Carlton School Superintendent and a letter from Sarah McMillan, which the Board has not been able to read yet. He asked to be able to read them before the Board deliberates.

**Les** said there was so much material submitted tonight that the Board cannot make a reasonable evaluation. He suggested delaying the decision-making until the next meeting.

**JR** said they can close verbal comment, but asked the Board to continue receiving written comment until the next meeting and then forward additional written comments to the County Commissioners.

**Les** said that the one problem has been that the Board comes to a hearing and is confronted with packets of additional written material. He suggested that any written materials should be sent to the Board so they receive it a day or two before the hearing.

**Dan** stated that all public oral and written comment is now closed. He said that the only communication the Board will have with the public is if they have questions for them or the developer and his agents. He asked to continue the hearing until August 2, 2006.

**Ben** asked to hold the meeting at the Ravalli County Fairgrounds again.

**Dan** said the Board will continue the public hearing at the Fairgrounds next Wednesday, August 2, 2006, at 7:00 p.m.

**Chip** said he had some questions about the Staff Report and asked for a revised report so it is easier to understand.

**Karen** said she can have a revised staff report mailed by Friday of this week.

**8. Suspend Public Hearing Until Next Meeting**

**9. Next Regularly Scheduled Meeting: August 2 at 7:00 p.m.**

Aspen Springs (Wesmont Builders/Developers, Inc.) Major Subdivision and Eight Variance Requests – Continuation of Public Hearing

**10. Adjournment**

**Dan** adjourned the meeting at 9:47 p.m.

**Ravalli County Planning Board  
Meeting Minutes for August 2, 2006  
7:00 p.m.**

**First Interstate Center, Ravalli County Fairgrounds, 100 Old Corvallis Road  
Hamilton, MT 59840**

**Continuation of Public Hearing**

**Aspen Springs (Wesmont Builders/Developers, Inc.) Major Subdivision and Eight Variance  
Requests**

**1. Call to order**

Dan called the meeting to order at 7:03 p.m.

**2. Roll Call (See Attachment A, Roll Call Sheet)**

**(A) Members**

Mary Lee Bailey (present)  
Dale Brown (present)  
Ben Hillicoss (present)  
Dan Huls (present)  
JR Iman (present)  
Chip Pigman (absent – excused)  
Les Rutledge (present)  
Lori Schallenberger (present)  
Gary Zebrowski (present)

Park Board Representative: Bob Cron (absent – excused)

**(B) Staff**

Benjamin Howell  
Karen Hughes  
James McCubbin  
Renee Van Hoven  
Jennifer De Groot

**3. Approval of Minutes**

Dan asked if there were any corrections or additions to the minutes from July 5, 2006. There were none. The minutes were approved.

**4. Amendments to the Agenda**

There were none.

**5. Correspondence**

Renee noted that the applicant submitted a map of proposed trails. She read from the revised Staff Report dated August 2, 2006. She said that Staff recommends the construction of trails as proposed prior to the final plat approval of the first phase. She also noted that the DNRC

submitted comments on the drainage and recommended that the Manning's equation include an extra two feet of depth. She said that Staff recommends a flood hazard determination and WGM has done that determination and submitted it to PCI for review. She asked that the Board make no decision on the subdivision until the review is complete. (See Attachment B, Update to the Staff Report and August 2, 2006 Amendment to the Aspen Springs Staff Report)

**Ryan Salisbury** with WGM Group, Inc., asked if Staff received an email from PCI near 5:00 p.m.

**Renee** said she did, but Staff has not yet had time to review it.

**Ryan** said that PCI looked at their flood hazard determination proposal and is in agreement that there are no huge issues.

**Renee** noted that Staff has not received a flood hazard determination from WGM for review.

## 6. **Disclosure of Possible/Perceived Conflicts**

**Dan** did not ask for conflicts.

## 7. **Public Hearing – Continued from July 17, 2006**

### (A) **Aspen Springs (Wesmont) Major Subdivision and Eight Variance Requests**

#### (i) Board Deliberation on Variance Request # 1 (Phasing)

##### (a) Board discussion and questions

**Dan** explained that the Board will now enter deliberations and may ask specific questions to the developer, his agents, or other members of the public.

**Gary** asked the Board and developers how they thought phasing impacts what donations and fees are paid now and what they will be worth near the end of the phasing.

**Nick Kaufman** said that the developer has proposed \$300 per lot to the School District, \$100 per lot to the Sheriff, to be paid at the time of obtaining an electrical permit, \$88,000 for the slip lane, improvements to Lower Woodchuck Road and Eight Mile Creek Road with Phase 1, and the platting of a land donation to the Fire District with Phase 1.

**Gary** said that 15 years from now, no matter what fees are agreed on today, the cost of living and valuation of the dollar will change. He asked if the developer has thought about paying additional monies through the phases to account for inflation.

**Ryan** noted that although the developer proposed a voluntary school mitigation fee, if impact fees are enacted, the homeowners in Aspen Springs would pay that fee; however, the lots should not have to pay for both donations and impact fees. He said that the new lots would also be subject to bond issues.



**Nick** noted that as the homes increase in value over time, taxation will increase. He said that the developer would not object to tying fees to the consumer price index.

**Les** asked what mitigation the Planning Department could institute in the event that the subdivision created adverse cumulative effects.

**James** explained that the entire subdivision was under consideration at this time. He noted that the DEQ approval process would address cumulative impacts of the water and sewer system, but the rest of the subdivision was on the table.

**Ben** asked if the liability to pay contributions to entities such as the School District and Sheriff's Department goes to the new owner or stays with the developer.

**Nick** said that the obligation would stay with the developer, although the amount of payment is shifted contractually to the lot purchaser.

**Ben** asked if changes in the Subdivision Regulations, state law, or local impact fees affect the future phases of the subdivision or if the amounts are locked in, with exception to the price index that was previously discussed.

**James** noted that approval of the subdivision would be under current applicable law and regulations. He said that they can account for future values that are calculable per the preliminary plat decision. He noted that impact fees would apply to this subdivision because under Montana Law, the fees are related to construction. He said that a few weeks ago, 76-3-510, MCA was raised in connection with impact fees and subdivision donations. He said that George Corn wrote a letter to Mr. McGee of the Florence Carlton School District, regarding the School Boards Association's position on the statute. He said that the School Boards Association will be making an argument that the County is not limited by the law's language due to changes in law regarding the impact fee bill. He explained that because of the law, Staff has amended Condition 17, which states that school donations cannot be used for the extension of capital facilities related to education. (See Attachment C, July 27, 2006 Letter from George Corn to John McGee)

**Ben** said he received a Staff memorandum dated August 2 which addresses a number of issues. Since no one in the audience has a copy of the memorandum, he asked the Planning Department to give a verbal summary of its contents.

**Renee** explained the Amendment to the Staff Report dated August 2, 2006. She noted that Staff removed Condition 28 about proposed parks.

**James** explained that the development proposal as submitted satisfies park dedication requirements without further conditions.

**Renee** continued to talk about the Amendment to the Staff Report dated August 2, 2006. She discussed the southern connection requirement, road improvements, floodplain issues, and effects on public health and safety.

**JR** said that one reason that the state phasing laws limit phases to a five-year basis, is that in a rural setting, there is not a lot of intent toward projecting more than five years at a time. He said that in the absence of phasing requirements exceeding five years, the Board has to make an attempt to project what kinds of impacts may come

upon the owners as phasing is continued. He asked what rights people who already purchased lots in the subdivision have. He said that answers to that question up to this point have been inadequate. He said that this subdivision is close in size to the town of Stevensville, which has its own infrastructure. He noted the difference with this subdivision is that it is controlled by one person or entity. He asked James what types of bonding the Board could require from the developer to make sure that the entity lasts until the completion of the project. He asked what would happen if a catastrophic event occurred, such as the organization sponsoring the subdivision becoming insolvent. He noted that in the northwest, there were proposals for a ski development where lots were sold predicated on a ski development being completed. He explained that the developers went bankrupt and now the homeowner's association owns the ski hill. He asked about the County's bonding process and impacts to the public if the phasing is granted.

**James** said that typically, conditions of approval have to be met before the filing of final plat. He noted that under state law, the subdivision applicant can present a final plat submittal and get approval without prior construction of infrastructure if they provide a bond or other security that the County Commissioners approve. He said a typical amount is 120%, although they require higher securities on roads due to increased costs. He noted that the Board could draft the issue as a lien. He explained that any title company that reviews the record will read the preliminary plat decision and see that a payment is needed at the time of sale. He said there were no state statutes on phasing. He noted that there is a deadline for filing final plat, but an alternate statute gives authority to extend the timeline with a written agreement. He said his opinion is: If the Board grants a phasing variance, it would qualify as a written agreement between the County and the developer.

**JR** asked that in this situation, where the applicant has requested 33 phases, what percentage of roads have to be complete for each phase.

**James** said that if the amounts are not clear in the application, the Board can impose conditions phase-by-phase if they choose.

**Karen** said there are at least four different proposed conditions which deal with the phasing issue to confirm that there is adequate infrastructure in place for each phase. She noted that Conditions 21, 24, 25, and 26 deal with phasing. Condition 21 requires temporary turn-arounds for emergency service providers. Condition 24 requires the County Commissioners to approve any changes to the phasing plan. Condition 26 requires that infrastructure necessary for each phase has to be finished before the next phase. Condition 25 requires easements for necessary infrastructure. She explained that DEQ review will happen as the subdivision progresses and the developer will have to meet the most recent DEQ requirements.

**James** noted that Staff has recommended separate conditions particular to the first phase. He explained that the Board can do the same and impose a condition particular to a specific phase.

**JR** asked at what point the owners get vested interest for what they have paid. He noted that every other entity that exists in this county has some infrastructure protection for the people already present. He said although the person with the master idea should have some control, it is not fair to the general public.

**Karen** asked JR if his question was at what point homeowners have control of the homeowner's association. She noted that the issue could be dealt with through a condition of approval.

**James** said the Board could add the condition provided it relates to the review criteria.

**JR** asked how the phasing will impact the current and future homeowners if there are problems with the sewer system, for example.

**Karen** said the Board may ask the developer to discuss specific parts of the homeowner's association relating to infrastructure.

**John Tabaracci** said that DEQ requires an operator for the system so the homeowner's association, which at the start is the developer, will have to retain an operator. He noted that people will have rights to the system because they have easements to them. He said that there will be sanitary easements reflected on different plats.

**JR** asked at what point a group of people has control over things in the subdivision, such as a drain field. He said the developer is saying that he is responsible for the subdivision until it is completed.

**John** said that all owners, when they purchase a lot, get an interest in the homeowner's association and they all have a vested property right to use it regardless of the developer.

**Nick** said that all the phases can stand alone or together regarding transportation, sewer, and water. He noted that the State of Montana controls the public sewer and water system and the cost of the operation and maintenance of sewer and water is borne by the landowners. He explained that during each phase, the drain fields are added to the larger system; as the facilities get larger, responsibilities get larger. He remarked that the homeowner's association deals with rules and regulations associated with owning pets, fences, and architectural control. He noted that regardless of a developer, when a group of 300 people meet the criteria, they can incorporate; then they can take over street maintenance and fire and police systems. He explained that this does not eliminate the option for future incorporation.

**James** read from the application that the homeowner's association would cease maintenance in the event there was a rural or city SID.

**Nick** explained that under SID waivers, the homeowners waive the right for anything allowed under state law. He noted that in extreme situations, the County could create a SID, so people could be assessed and run what part of the system they wanted with the SID, so there are three layers of safeguards.

**Les** noted that the application said the homeowner's association is not created until six months after the last unit has sold.

**Perry Ashby** said that they formed a homeowner's association very early in another one of his projects and the homeowners were involved in the development process.

He said that there are fees paid to the association for road, water, sewer, and lawn maintenance, and the fees are kept in a kitty for capital improvements projects. He said that although the other project only has 250 homes built out of an expected 380, the homeowner's association has complete control of the subdivision at this point.

**John** said that the application states that until the time that lots are sold by the declarant, he shall act as the association. Once lots are sold, the declarant with the owners will act as the association. He said that within six months of the last lot selling, everything is turned over to the homeowner's association.

**Lori** pointed out that Staff is recommending a payment of \$88,000 to MDT at the start of the first phase.

**James** noted that the Staff's conditions are not exactly the same as what the developer is proposing.

**Ben** said although he likes seeing the full plan, he is concerned about the variance. He noted that energy, the climate, the dollar, and gas prices are changing and there are constantly changes to the law. He noted concerns about global warming. He said he was concerned about approving the variance because whatever happens in the future, the Board is stuck with what they decide today. He said he would not mind approving five years worth of phases and then having the developer come back with whatever they will do in the next five years. He said he finds it problematic to project what will happen over 20 years and is opposed to approving the variance.

**Dale** asked Ryan if he checked on the filters and modules for the Orenco system. He asked how much parkland space will be used for drain fields.

**Ryan** said that about 10% of the parkland will be drain fields. He noted that the systems can be placed at grade. He recommended looking at the Wildflower Subdivision because the insulation of those Advantex systems is much more typical.

**Dale** said that the systems in the Twite subdivision have sides which open up, which would require them to be just above grade for maintenance. He estimated that there will be 72 systems in Aspen Springs, which will take up a lot of the parkland in different areas.

**Ryan** said that there is one park with no drain fields proposed.

The Board went through the Five Criteria. (See Review of the Variance Request Against the Five Criteria)

**JR** commented that the developer made a strenuous effort to create something that the public said they wanted through the Growth Policy, including roads, parks, and open space. He noted that the developer will provide that if he can have double density in a rural area 25 miles from jobs. He explained that the Board has to consider whether the tradeoff is worth it and noted that there is a fundamental difference between this subdivision and those submitted previously. He explained that the developer offered to put in public utilities and infrastructure. He referred to

the Gunshy Ridge subdivisions, which were hundreds of lots spread out over four applications. He said he was in favor of the variance on this basis.

**Ben** clarified that the discussion is on the first variance, which is to allow 33 phases over 20 years. He said that the developer could propose the exact same subdivision and complete it in two phases over four years and not need this variance. He noted that a lot of the mitigation payments are spread out over 20 years.

The Board continued going through the Five Criteria. (See Review of the Variance Request Against the Five Criteria)

**Ben** recommended a motion to deny the variance for the reasons stated in the record.

**Mary Lee** seconded the motion.

**Nick** said the Subdivision Regulations provide a time for the applicant to speak before each motion is voted upon.

**James** explained that the applicant had plenty of time to speak at previous meetings.

**Dan** noted that the Board has not historically granted developers or their agents time to speak.

**James** said that the regulations are not clearly written. He said that the Board may allow the applicant to speak if they have something to add, but previous comments have already been heard.

**Dan** asked if the applicant wished to amend their presentation.

**Curtis Cook** interjected that the meeting is a public hearing if the developer is allowed to speak again.

**James** said public comment would have to be reopened if there was new information. He said the Subdivision Regulations refer to a closing argument relating to the motion.

**Dan** said that based on historical precedents and James' statements, the Board will not accept testimony at this time.

**JR** asked James what would happen if this variance is denied.

**Karen** said that phasing requirements in the Subdivision Regulations assert that if this variance is not granted, the applicant would be under the general preliminary plat decision deadline or the applicant could amend their application to fall under Section 3-2-21 of the regulations, which allows two phases over four years.

**JR** asked if there is a provision for extension with reason.

**James** commented that if the variance is denied, but the subdivision is approved, unless the application is amended to provide phasing plans, the entire subdivision would need to be done in one phase.

**JR** asked if the alternative in denying 33 phases over 20 years is either a resubmittal of another phasing plan or two phases over four years.

**James** said that unless there was a change to the application or a different variance proposed, the developer would have only one phase due for completion within 18 months of the preliminary plat extension with the possibility for an extension per Commissioner approval.

**Gary** asked if the variance is denied, if the applicant could resubmit a phasing plan to be considered as a variance.

**Karen** said there are three options available to the developer: meet the standard 18-month approval time for major subdivisions with a one-year extension possible, meet the phasing plan in the regulations (two phases over four years), or submit a new variance request with a different phasing plan.

**Gary** asked how much time the applicant has to resubmit a new variance for phasing.

**Karen** said that if the variance is denied by the County Commissioners, it would affect their proposal and the subdivision would go to the standard 18-month preliminary plat approval time. She said the developer would have until he filed for final plat to request the variance.

**Gary** asked if the developer does want a new variance, if it extended the time for the Board to make a decision or if they are bound by the County Commissioner meeting and need to make immediate action.

**Karen** explained that the developer could ask for a variance after they receive preliminary plat approval, which might affect the proposal and require evaluation, or they could ask for an extension of the preliminary plat review time.

(a) Board action

(1) Review of the Variance Request against the Five Criteria

1. The granting of the variance will not be substantially detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

One Board Member agreed; seven disagreed.

2. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Eight Board Members disagreed.

3. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Eight Board Members disagreed.

4. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Six Board Members agreed; two disagreed.

5. The variance will not cause a substantial increase in public costs.

Eight Board Members disagreed.

(See Attachment D, Variance #1 Five Criteria Review)

(2) Board Decision

The vote was called; the members voted (8-0) to deny the variance. (See Attachment E, Variance #1 Vote Sheet)

(ii) Board Deliberation on Variance Request # 2 (Road connection to the south)

(a) Board discussion and questions

**Les** said that the Board cannot argue against the Subdivision Regulations, which require a road connection to an established platted area.

**Gary** asked if this was a second right-of-way connection.

**Karen** said the current proposal is for three accesses off Lower Woodchuck Road.

**Ben** said he has spent 10 years on the Florence Volunteer Fire Department and said results can be catastrophic if there is only one way out of a neighborhood. He said although he knows the neighbors to the south do not want added traffic, this issue could be a huge problem.

**Gary** clarified that the developer is proposing an emergency exit only, not a routine travel area.

**Lori** asked Staff their recommendation on the variance.

**Renee** noted that Staff's recommendation is for denial. She noted that Staff has not chosen a particular area for the road access, but the developer is proposing an emergency access off Mountain View Road.

**Ben** recommended a connection off Eight Mile Creek Road to Hidden Valley North, because without one, they could still end up with a bottleneck on Lower Woodchuck Road and Eight Mile Creek Road.

**Nick** said that any one of the roads to the south of the subdivision could be used for a proper neighborhood connection. He also noted that the access has to be established with Phase 1. He commented that Staff said those roads have inadequate right-of-way so they would not have physical access.

**Ben** said that it is not up to the Board to design the second access, but they have to judge whether the developer has chosen a safe way. He asked how the emergency gate would function if someone in the development had a heart attack.

**Nick** said they usually place a 1-foot by 4-foot gate at the emergency exit, which can be broken with a car or a foot.

**Ben** said that based on the size of the subdivision, the development will need a regular, open, and available road.

**Ryan** said that the developer has presented this information in previous presentations, but has not identified each of the variances. He explained that the Road Department will not approve a road with a 40-foot right-of-way and he does not know if the County and/or landowners will be willing to work with them. He noted that the Road Department did approve their project and that Lower Woodchuck Road was designed to handle large loads of traffic. He said that the Staff Report noted this connection is not a requirement of the Subdivision Regulations. He explained that this variance is a request to provide inter-neighborhood connection with a trail and emergency barricade.

**James** said that the developer has had plenty of time to address the application. He explained that this issue is not a recommendation from Staff, but is located in the Subdivision Regulations, which is why a variance was requested. He read the Subdivision Regulations which discuss inter-connectivity of roads. He said that the second clause addresses the road to the east. The first clause is a requirement that the roads be connected to adjacent platted areas. He noted that under the current regulations, they only have to connect to one of the roads to the south. He said his position is that an emergency access with a gate does not satisfy that requirement because gated access does not allow for any traffic.

**Les** motioned for denial of the variance.

**Ben** seconded the motion.

**Ryan** said he believed they could present their side of the variance request because these items were discussed two or three weeks ago.

**Ben** noted that the Board has repeatedly recommended that they have multiple accesses designed in all major subdivisions.

**James** noted that if the variance is not granted, the developer will have to connect to that road and that road will need to be upgraded to County standards.

**Ryan** asked if the road could be identified as something other than a primary access so it could be a lesser width.



**James** said he believes a 60-foot easement is required for all roads and the developer would have to apply for another variance if he wants a smaller road.

**Ryan** asked if the Board could condition it in.

**James** said that was not possible, although a variance application can be submitted after the subdivision is approved.

**Gary** asked the standard width necessary for fire trucks.

**James** said that was asking for new facts beyond this variance.

(b) Board action

(1) Review of the Variance Proposal against the Five Criteria

The Board did not review the Five Criteria beyond their discussion and findings with the Staff Report.

(2) Board Decision

The vote was called; the members voted (7-1) to deny Variance #2. (See Attachment F, Variance #2 Vote Sheet)

(iii) Board Deliberation on Variance Request # 3 (No-build zone over high pressure gas line)

(a) Board discussion and questions

The Board took a five-minute recess.

**Ben** said he understands that the new Subdivision Regulations require a 50-foot easement and the old ones required a 100-foot easement.

**Renee** explained that the old regulations required 100-foot setbacks from the line and new the regulations require 25-foot setbacks.

**JR** motioned to approve the variance in accordance with the new regulations and according to the recommendation in the Staff report.

**Lori** seconded the motion.

(b) Board action

(1) Review of the Variance Proposal against the Five Criteria

The Board did not review the Five Criteria beyond their discussion and findings with the Staff Report.

(2) Board Decision

The vote was called; the members voted (8-0) to approve Variance #3. (See Attachment G, Variance #3 Vote Sheet)

(iv) Board Deliberation on Variance Request # 4 (Lot size)

(a) Board discussion and questions

**Mary Lee** said she was concerned about this type of development in the proposed area because there were only 161 acres available for 642 lots. She said that many of the lots are less than 7,500 square feet and seven are less than 4,000 square feet. She said she has concerns about granting this variance.

**Les** said he thinks this is a good attempt by the developer to initiate a modified cluster development with mixed use. He noted this is the way the County will be going and people should get accustomed to these designs. He explained that although this development is not technically a "cluster development," it does accommodate more people in smaller spaces and it conserves infrastructure.

**Gary** asked if there were any fire standards for how close homes can be placed.

**Perry** explained that International Residential Code requires a minimum 3-foot side setback, but he has proposed a 5-foot setback.

**Karen** noted that Staff's recommendation was a 5-foot setback.

**Ben** said he agrees with some of Les' comments, but also thinks there are other solutions than these very small lots. He recommended sharing common walls, creating high-rises, or building multiple stories. He felt that these small lots, although he agrees with their density, are out of character with the surrounding area.

**Dan** said that it is a good design from a land standpoint. He noted that 5 and 10-acre tracts are eating up the valley and denser developments will have to be proposed if everyone wants to enjoy the area.

**Ben** asked to go through the Five Criteria and asked Staff their recommendation.

**Karen** said that Staff recommended conditional approval of the variance.

**Nick** said that the variance will not result in a substantial increase in public costs.

**Ben** said he respectfully disagreed.

**Gary** motioned approval of the variance in accordance with the conditions in the Staff Report.

**Dale** seconded the motion.

(b) Board action

(1) Review of the Variance Request against the Five Criteria

1. The granting of the variance will not be substantially detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

Six Board Members agreed; two disagreed.

2. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Five Board Members agreed; three disagreed.

3. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

One Board Member agreed; seven disagreed.

4. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Seven Board Members agreed; one disagreed.

5. The variance will not cause a substantial increase in public costs.

Five Board Members agreed; three disagreed.

(See Attachment H, Variance #4 Five Criteria Review)

(2) Board Decision

The vote was called; the members voted (6-2) to approve Variance #4. (See Attachment I, Variance #4 Vote Sheet)

(v) Board Deliberation on Variance Request # 5 (Flag lots)

(a) Board discussion and questions

**Gary** asked Staff to briefly explain the variance.

**Karen** noted that flag lots are permitted by the Subdivision Regulations if they are not in avoidance of road construction. She explained that the variance only affects six lots and the length of road construction avoided is short. She noted that Staff recommended approval of the variance.

**JR** motioned to approve the six flag lots, as they are less than one percent of the total proposed lots.

**Les** seconded the motion.

(b) Board action

(1) Review of the Variance Proposal against the Five Criteria

The Board did not review the Five Criteria beyond their discussion and findings with the Staff Report.

(2) Board Decision

The vote was called; the members voted (8-0) to approve Variance #5. (See Attachment J, Variance #5 Vote Sheet)

(vi) Board Deliberation on Variance Request # 6 (On-site road standards)

(a) Board discussion and questions

**Gary** clarified that this variance was requested so that the internal roads would be approved under the new regulations instead of the old ones.

**Ben** motioned approval of the variance subject to the conditions in the Staff Report.

**Lori** seconded the motion.

(b) Board action

(1) Review of the Variance Proposal against the Five Criteria

The Board did not review the Five Criteria beyond their discussion and findings with the Staff Report.

(2) Board Decision

The vote was called; the members voted (8-0) to approve Variance #6. (See Attachment K, Variance #6 Vote Sheet)

(vii) Board Deliberation on Variance Request # 7 (Off-site road standards - Lower Woodchuck Road)

(a) Board discussion and questions

**Gary** asked the pro-rata amount the developer would have to pay.

**Renee** suggested asking the developer the exact proposal.

**Ryan** noted that Aspen Springs will not create all the traffic on Eight Mile Creek Road or Lower Woodchuck Road. He said the developer is proposing a payment schedule as lots are sold, which was included in the Board's packets. He asked to amend the variance to say that the developer will make road

improvements on Lower Woodchuck Road and Eight Mile Creek Road if the developers can enter into a latecomer's agreement.

**Gary** asked if latecomer's fees or costs are calculable.

**James** said he did not believe so. He also said he did not believe the Board could condition in a latecomer's agreement. He noted there is no way to calculate the costs because the County does not know the actual amount of improvement costs because it would be based on road costs and road usage by the latecomer.

**Ben** asked if the existing homeowners who use the road would be affected.

**Ryan** said they would not be. He also noted that this variance request would allow Lower Woodchuck Road to be designed under the new road standards.

**Ben** said if they are proposing to pay all road improvements and asking for a latecomer's agreement, but there is not a monetary amount for road construction, there will not be a way to calculate the costs.

**James** said he has a draft amendment to the regulations with a formula of what the latecomer would pay, based on the first developer doing improvements. He said that the idea of reimbursing the first developer is common because these major infrastructure improvements are usually used by more than just one developer.

**Karen** said she did not recall receiving a revised variance proposal that would allow the developer to construct the road with a provision for a latecomer's agreement.

**Ryan** said that it was suggested in letters from John Tabaracci and was also mentioned in previous public hearings. He said that if the regulations are amended so that latecomer's agreements are mandated, he asked, on the record, to have Aspen Springs benefit.

**Ben** said that the County does not normally require road improvements for minor subdivisions and that there has to be a reasonable limit on how long the developer will be reimbursed for improvements.

**Ryan** said he expected a sunset clause, with typical infrastructure lasting about 20 years. He noted that the bids to build this road can easily be submitted to the County and documented. He also noted that smaller subdivisions would only have to pay a percentage of the road cost since they do not contribute large amounts of traffic.

**Karen** said that although the concept of improving the entire length of road was raised, the developer has not submitted formal road plans for the entire length of the road.

**Ryan** said those plans can easily be approved and could be conditioned based on approval by the Road Department. He noted that road plans for Mountain View Drive have not been submitted either.

**Karen** said that as far as Staff is concerned, those plans would constitute new information.

**James** said the formula that they will try to draft into the Subdivision Regulations will include provisions for the life of the improvement and when the latecomer comes along. He explained that latecomers who arrive in the 10<sup>th</sup> year of a 20-year lifespan of infrastructure would pay less than those who arrived during the first year. He noted that the intent is that it would apply to all future subdivisions regardless of when infrastructure was completed.

**Perry** said he does not consider this proposal to be new information. He noted that the subdivision submittal discusses pro-rata and identifies their expected percentages of road usage. He noted that although he has not submitted a design, he has submitted the concept of pro-rata. He noted that the alternate proposal is to pay the full amount of road construction with the condition that there is a latecomer's agreement. He said that in the packet, there is talk of nexus and proportionality and he believes that pro-rata is close. He said that he might pay \$400,000 to \$500,000 for roads up front if others in the future are willing to pay for the roads.

**JR** said it appears that the Board has had a problem with the way the Road Department receives money going to a grader district. He noted he was in favor of having the developer pave the road from the subdivision to Eastside Highway and that the County Commissioners accept this as total payment. He also recommended that new subdevelopments pay a formula for the roads that they use and that there be a sunset clause in conjunction with the formula.

**Lori** said she agrees with JR because otherwise, everyone else has a free-ride. She recommended that the Board come up with some provision so the developer could receive a pro-rata share from future developments.

**Ben** agreed that JR made sense, but asked if the Board could rewrite the variance.

**Karen** said that John Tabaracci's letter mentioned that Wesmont may consider building out Lower Woodchuck Road and Eight Mile Creek Road. She noted that Staff does not have full road plans in review. She said that the current request is to pay the amount of money required to develop the road and that information is in the record.

**Lori** said she spoke with Dave Ohnstad and said he understood what the developer is currently proposing, as far as paving and doing roads up front.

**Ben** asked if the developer will pay the money and the County will build the road.

**Ryan** said the County would not build the road. He noted the original proposal was a pro-rata payment to the County so the County would build the road, but their proposal now is to physically build improvements on the paved portions of Eight Mile Creek Road and Lower Woodchuck Road.

**James** noted that the current proposal is to withdraw part of the variance. He said that the developer is still requesting a design exception under the variance.

**Ryan** said that the design exception is out of equation due to a recent County Commissioner decision. He said that the developer is requesting to build the road under AASHTO standards.

**Karen** said that the new information, including road plans, needs to be submitted to Staff and then the subdivision would have to go back through the public process. She explained that the County is stringent on what constitutes new information.

**James** said that the County Commissioners did decide that design exceptions from AASHTO did not require a variance, but both he and George Corn believe that would be illegal.

**Ryan** said that if it would help with new information, they could pay the County to do the road improvements. He also said he agrees with James about the design exception.

**Dan** said he agrees with JR's position that the County has a problem with pro-rata and they should allow the developer to bring roads to County standards and then be reimbursed with a latecomer's agreement.

**Les** said he believed the Board has to act on the variance as it is presented and if the developer wants to attach conditions onto the payment process, that can be done after the approval or denial of the variance. He motioned to approve the variance based on the findings of fact and subject to the conditions in the Staff Report.

**Gary** seconded the motion.

**Steve Hall** asked if the road design includes integration of uncrushed base and noted that is basically like stacking BBs.

**Dan** noted that public comment is over.

**JR** said the point is valid, but noted that the AASHTO standard is a national standard. He asked if AASHTO standards are federal regulations.

**James** said that AASHTO standards are design guidelines, not regulations, but are used by engineers. He explained that the guidelines were adopted as regulations through the Subdivision Regulations.

**JR** noted that the County has sold all their asphalt equipment.

**Ben** said he was in agreement with JR's recommendation. He noted that it seems more appropriate to deny this variance and recommend a resubmittal with complete information. He commented that in the variance, the developer is not proposing to pave the road.

**Lori** said that the current proposal is for the developer to construct the road. She asked Les to amend his motion so that if a process is put in place, the developer would be reimbursed by other users.

**Les** said the Board needs to act on the variance and if they want to add conditions, they can do that later.

**Dale** said that the proposal is for the developer to pay a portion of the cost to improve Lower Woodchuck Road. He noted that the road does not currently meet County standards because it is just oiled gravel.

**Karen** noted that the developer's original proposal was to reconstruct the gravel portion of Lower Woodchuck Road and pay pro-rata on the other roads. She explained that Staff's recommendation reads as conditional approval, but should functionally be denial. She said that the developer is currently asking to construct all of Lower Woodchuck Road, which would require new information. She emphasized that Staff is requesting that Lower Woodchuck Road be upgraded to meet County standards.

**Ben** clarified that Lower Woodchuck Road would be upgraded from Eastside Highway to the last exit in this subdivision, but not beyond that.

**Perry** said he has done a lot of boring testing to determine the value of the road from the roundabout to the paved north and south sections of Lower Woodchuck Road. He said that there are a lot of things needed to make the road meet AASHTO standards.

**JR** said that the original variance request occurred before the Board started the public hearings. He asked if the Board would have to have another hearing for this variance and if it would involve only new information on the variance.

**James** said that the variance is ripe for decision. He noted that alternate proposals did come out in the public hearing and suggested clarification of the motion. He explained that the original variance was to pay pro-rata and to ask for a design exception for the curvature. He said that it sounds like the pro-rata request has been withdrawn, but the design exception is still out there. He commented that he does not believe that a new hearing is required on this variance. He noted that Staff does not have road plans for Lower Woodchuck Road or Mountain View Lane, although the plans will be required, most likely before the County Commissioner hearing. He said that pursuant to SB116, the road plan information will have to come back before the Board, but the hearing would only be on the new information, not the entire variance.

**JR** asked if the Board could split the variance into denying the pro-rata share and approving what the Board wants them to do.

**Karen** said that would be a good idea. She noted that the original variance request was to pay pro-rata and to reconstruct the gravel portion of Lower Woodchuck Road to current County standards.

**Les** said his motion was to approve Variance 7 as stated by Staff in the Staff Report.



**Gary** said he was confused because what the developer wants to do is different from the variance request. He noted he likes what the developer is currently proposing, but wants to follow the correct procedure.

**Ben** suggested denying the motion and letting JR restate the new one.

(b) Board action

(1) Review of the Variance Proposal against the Five Criteria

The Board did not review the Five Criteria beyond their discussion and findings with the Staff Report.

(2) Board Decision

The vote was called; the members voted (7-1) to deny the motion to approve Variance #7. The motion failed. (See Attachment L, Variance #7 Vote Sheet)

(ix) Board Deliberation on Variance Request #7 & #8 (To allow the developer to pay a portion of the cost to improve Eight Mile Creek Road from Eastside Highway to Lower Woodchuck Road instead of improving the road to meet County Standards)

(a) Board discussion and questions

**JR** motioned that the Board deny the request by the developer to pay the pro-rata for Lower Woodchuck Road and Eastside Highway.

**Ben** seconded the motion and asked what the second motion would be.

**JR** said the second part of his motion is to approve bringing the road to AASHTO standards from the subdivision to Eastside Highway, with an additional request for the County Commissioners to allow a latecomer's payment for new development on road.

**Dale** noted that Gunshy Ridge III was just approved in the same area and asked if they would have to pay pro-rata for the new roads.

**Marilyn Owns Medicine** said that the public does not have a clear understanding of the proposal because they have not had an opportunity to see it and comment on it.

**Karen** explained that the Board wants to combine Variances 7 and 8 and this would address both of them.

**JR** said that current landowners and already approved subdivisions, such as Gunshy Ridge III, would be exempt from paying back payments for road improvements.

**James** recommended that the Board act on the first motion.

**Ben** asked the names of road sections leading to the subdivision.

**Ryan** showed a map which divided the roads into different segments.

**JR** restated that his first motion is to deny the request for a pro-rata share on the road from the subdivision to Eastside Highway.

**Dale** seconded the motion.

The Board voted on the first motion. (See Board Decision below for results of the vote)

**JR** motioned to accept the developer's offer to pave, at his expense, the roads from the north subdivision entrance to Eastside highway in their entirety according to AASHTO standards and with a latecomer's agreement per the County Commissioners.

(Staff Note: Since the developer did not request a variance from the road standards to meet AASHTO for the entire length of off-site roads, this motion can only technically apply to the gravel portion of Lower Woodchuck Road.)

**Gary** seconded the motion.

(b) Board action

(1) Review of the Variance Proposal against the Five Criteria

The Board did not review the Five Criteria beyond their discussion and findings with the Staff Report.

(2) Board Decision

The vote was called; the members voted (8-0) to deny the request of the developer to pay pro-rata for external roads except the gravel portion of Lower Woodchuck as mentioned in Variances #7 & #8. (See Attachment M, Variance #7 & #8 Vote Sheet 1)

The vote was called; the members voted (8-0) to approve the motion to allow the developer to improve the external subdivision roads to Eastside Highway to AASHTO standards with a possible latecomer's agreement. (See Attachment N, Variance #7 & #8 Vote Sheet 2)

(c) Board discussion continued

**JR** said that Variance 8 is a moot point.

**Les** said that as he read Variance 8, it was a request not to pave Eight Mile Creek Road. He said that a variance was passed requiring a southern entrance to the subdivision via Eight Mile Creek Road and thought it might come up as an issue now.

**Ben** noted that the Board only denied the other variance and did not specify a solution.

**Karen** said that with denial of the connectivity variance, a portion of Eight Mile Creek Road would have to be approved and this would trigger the submittal of road plans.

**James** said that both roads will have to be completed under the old regulations since there is not a variance request that covers it.

**Ben** asked if they needed any findings of fact under Variance 8 if it is moot.

**Karen** said they did not.

(x) Board Deliberation on the Subdivision Proposal

(a) Board discussion and questions

**Gary** asked if, based on denials of some of the variances, the developer was going to resubmit his plans because if they decided on the subdivision as it is now, it would be based on denials and approvals. He said he was not sure if it was appropriate to move on if the developer will resubmit and asked the Board to allow additional time for information.

**Ben** said that whether they vote on the subdivision or not, he has some questions to present. He noted that if the County Commissioners approve the phasing variance they will be dealing with a different subdivision than the Board is considering. He asked what other subdivision proposals Karen was aware of that relates to these roads, the schools, the sheriff, etc., on other major parcels around this property.

**James** said the information has not been compiled and there is no way to answer his question. He said that other property owners have private interests, but they do not affect the impacts of this subdivision.

**Ben** said he respectfully disagrees. He believed that the Board should consider proposals which have been submitted to the Planning Department. He asked if the beneficial water use permit from DNRC is for all wells and the total project or just the first phase.

**Renee** said the permit is for the entire project and noted that the DNRC requires public water systems to have a beneficial water use permit.

**Ben** recommended a modification to make the statement clear. He said he was concerned if Condition 15 of the Staff Report still applies and asked if the Board needs to set some time limits. He said he understands that the issue changed with the memorandum given out tonight, but asked James to explain the matter.

**James** said that the language on Page 9 was proposed to be deleted by the most recent Staff Report because the developer will not pay a pro-rata share. He noted it could apply if the County Commissioners approve the variance of which the Board recommended denial. He noted that if the roads were paved, there could not be an improvement district that could make the same improvements.

**Ben** said that the Staff Report left the amount of school donation up to the Board for recommendation. He said the School District is asking for a payment of \$5,312.50 and he recommends that barring other negotiations, the Board condition that amount. He asked how the developer will meet the water supply requirements for the Fire District.

**Ryan** said the developer is proposing fire hydrants with amounts of 1,000 gallons per minute, totaling about 700,000 to 800,000 gallons per minute.

**Dale** said the Board needs to get their act together about school donations. He asked if the Board requires Perry to pave up to the roundabout, if he still has to submit the \$88,000.

**Ben** said the issue comes down to the interpretation of cumulative impacts. He said that if the Board cannot consider future factors, then they end up with a situation of 30 slots available in the school, and any future subdivision can be approved as long as it does not top 30 kids. He said that if the amount of students will push the school over the top, the Board has no choice but to deny the subdivision, if there is no other offer for the school. He said that the only other solution is for taxpayers to pay for schools. He said the Board may run into a situation where they may approve small subdivisions but cannot approve larger ones because there is not enough money from taxes to pay for the schools or the Sheriff.

**Lori** asked if Ben if he had read the letter from James that discusses capital improvements.

**Karen** said that the \$88,000 donation for improvements to the roundabout on Eastside Highway was a separate improvement than the roads discussed.

**Gary** said that one of Staff's recommendations for impact to wildlife was that the applicant remove lots E124 through E151 and other lots from the elk winter range. He asked if the developer had responded to that request.

**Nick** said that the applicant examined letters from Montana Fish, Wildlife & Parks (FW&P) for subdivisions in the same winter range. He noted that the Board has approved subdivisions in the winter range and their biologist noted the area is not critical winter range and has no greater impact than those subdivisions already approved.

**Perry** said that after recent hearings, a FWP Biologist asked permission to walk the subdivision site; he found no indication of elk. He said that Dr. Joe Elliott asked them to leave substantial open space to benefit wildlife. He said he feels that it is important not to create a precedent with lot removals.

**Gary** said that FWP requested that those lots to be exempt from building.

**JR** asked if the beneficial water use permit was for all the wells or just the first phase. He asked if the permit included the additional 40 lots that would have private wells. He noted that wells on private property are not regulated unless they exceed 35 gallons per minute. He said that at a previous hearing, the developer's agent said that 300 gallons per minute would be required for the

entire subdivision, but also stated that 40 lots would have private wells; the addition of 40 houses at 35 gallons per minute with proposal for 300 gallons, is over 1200 gallons per minute. He asked clarification because it appeared that 40 wells will go without scrutiny in this subdivision because they are under a different law.

**Renee** said that if wells use 35 gallons per minute or less, they are exempt from a water permit from DNRC. The developer is proposing flexibility for individual wells, shared wells, or water from a public water system.

**JR** asked clarification if the additional wells proposed were part of the overall water rights previously proposed.

**Perry** said they will retract the request for 21 additional wells on larger lots. He said that Staff recommends that the entire community water system be approved before the first phase is platted and there will not be any private wells.

**Renee** said that the Board could add a condition of no private wells.

**Ben** said that under the language of the statute, it appears the County is prohibited from requiring a school donation. He recommended that the developer reach an agreement with the School District. He said that there is a current proposal for \$300 per lot, but the School District wants \$5,000 per lot, which is a long way from compromise. He said that the Board has to name a recommended amount and his recommendation is \$5,312.50. He said that the state law is strange and does not impose limits on other capital facilities like public health and safety or public roads. He said the Board is not restricted from asking for an agreement between the subdivider and Sheriff to address problems.

**Lori** said the school donation is a voluntary contribution because the County does not have impact fees at this point.

**Ben** asked if impact fees will apply even if they are passed after the subdivision is approved.

**James** said there is nothing to prevent the developer from paying more than is customary. He noted that unless there is a compelling argument why the law does not apply, the Board cannot require a condition for any payment relating to capital facilities for education.

**JR** said that at the last public hearing, there was a discussion between James and John Tabaracci. He asked if there was resolution to that discussion.

**James** said the discussion with Tabaracci was about cumulative impacts. He said that the school donation argument was raised by a different attorney at a different meeting.

**Gary** said that one of the concerns relating to public health and safety is the Sheriff's difficulty in responding to calls in the northern part of the County. He noted that residents of Aspen Springs would have to decide if they wanted to incorporate. He said he did additional research to see if private security firms

could offer services comparable to that of the Sheriff and found out they could. He asked the developer to consider adding private security to homeowner's fees for added public health and safety protection. He acknowledged that the circumstances might change, but for the interim, he asked the developer to consider that option.

**Les** said that he worked in law enforcement for a number of years and the Sheriff has jurisdiction over the area; he would have to approve the internal security force. He said it is unlikely that he would have the legal right to approve an internal security force that had not been through law enforcement academy.

**Lori** said that Renee recommended no Board decision as Staff is waiting for information on the flood hazard determination review.

**Ben** said that as of the last Staff Report Amendment, important issues have not been mitigated and there are no proposals to mitigate the situations. He noted that based on that memo, Staff recommends denial.

**Renee** said that Staff recommends that the Board close the public hearing and request more information; the developer would have to go through the public process again.

**Karen** said that if the Board is asking if Staff could recommend approval of the subdivision in its current status, Staff would recommend denial at this point. She recommended that additional information be provided and additional mitigation be resolved before reopening the public process.

**Perry** said he feels they have proposed sufficient voluntary mitigation, especially with \$88,000 proposed for the slip lane. He said he has two letters, one from Jim Lynch, the director of MDT, and the other from a local engineer, Dwayne Kailey, which acknowledge that MDT cannot ask for money. He said that he does not think the Sheriff will ever give his assent to mitigation. He said that as of 5:00 p.m., he feels that he has mitigated the flood hazard zone.

**Nick** noted that the developer has worked hard to reach agreements with MDT regarding the roundabout and slip lane. He said he left numerous phone messages and emails with MDT, but they did not return his phone calls or correspondence. He explained that MDT noted they could not take money for the slip lane, and explained that the developer has volunteered \$2,000 for a traffic study.

**Steve Hall** noted that the letter sent to him was not from Jim Lynch, but from Brian Schweitzer.

**Nick** said he met with the Sheriff before they submitted this subdivision and tried to identify the problem and mitigate it. He said that every time they tried to propose mitigation, the Sheriff told him that the County Commissioners control the budget. He noted the Sheriff also said that he will take any donation but it does not mitigate the current situation. He explained that there is a problem without the addition of Aspen Springs. He said he thought the Sheriff is accepting their proposal in his response letter. He noted that they hired a wildlife expert and then left high ridges open, which are the most important

areas for mule deer and elk. He commented that FWP will probably not come out and say that the situation is mitigated.

**James** said that the County does have jurisdiction over that intersection regardless of MDT's thoughts. He said that Montana Code and local regulations require review for public health and safety and local services, which includes emergency services. He said that there are impacts that can be required to be mitigated or might affect the outcome. He noted that both he and George Corn concur with Staff's recommendation.

**JR** asked if the Board is requiring the developer to mitigate to the federal highway as well.

**James** said that if they make a finding that there will be negative impacts from the subdivision to any local roads due to public health and safety, the Board has the power to take that into account regardless of road designation.

**Ryan** said that MDT identified a public health and safety issue at the intersection of Eastside Highway and Eight Mile Creek Road, but said there is not a health and safety issue at the intersection of US Highway 93 and Eastside Highway. He noted that MDT just started a study on the corridor from Lolo to Florence to identify problems there. He said that Staff is asking the developer to mitigate things of which he can provide no mitigation. He explained that in an email chain Matt Smith, the County's contracted reviewing engineer, said that after reviewing the flood areas, he only has two recommendations: that recreational improvements be anchored and that the corner of Lot E-231 be conditioned with a 10-foot no-build zone for drainage. He noted that this is the additional information which Staff requested.

**Candi Jerke** asked if this was new information.

**Ryan** said that Staff has not been able to look at it yet but he believes that lots B147 through B149 are not in the flood hazard area.

**John** said he was getting the perception that Staff and the Board are thinking that to mitigate, the developer has to get the agency to braise the situation in the first place and then have the developer agree. He said that 76-3-608, MCA says that the Board can impose mitigation. He noted that if agencies are not available, the Board can decide the mitigation themselves.

**Ben** motioned denial of this subdivision as it is structured based on information in the record, public comment, documents, and information submitted by Staff and with concerns about local services, and public health and safety.

**Les** seconded the motion.

**Gary** said he is concerned that he feels the Board is washing their hands and sending it to the County Commissioners with many unresolved issues. He explained that the developer will probably present new variances to keep this subdivision under consideration. He suggested that the Board still needs to do work on the subdivision.

**Les** commended the developer on some of his fine proposals and noted a trend toward open space preservation. He explained that the Board is now faced with trying to provide adequate public services and look out for public health and safety. He said that the Board cannot ignore the situation and there are no suggestions for alleviation. He said that the last attempt to get the Sheriff's budget enhanced with a mill levy was turned down. He noted that an additional 6,000 trips a day on the roads at full build out creates a traffic situation bound to be hazardous and the Board cannot alleviate that situation. He noted that there were many written and verbal comments given and the general tenor from the public was that the subdivision is not in the public interest; the Subdivision Regulations say the Board can turn down a subdivision if it is not in the public interest.

**JR** said that the motion was out of order because the Board did not discuss or review the Six Criteria.

**Mary Lee** said that she is for cluster development and likes the concept because it leaves open space, but she is concerned about services to the community and would like to make sure that they are judging this in reference to the public and what their needs and desires are as well.

**Ben** said he felt like it was important to get something on the table, but did not mean to exclude the Six Criteria. He listed the decision options available for the Board and noted that the applicant could ask for an extension and provide more data for additional hearings.

The Board went through the Six Criteria. **Gary** abstained from voting. (See Attachment O, Subdivision Six Criteria Review Sheet)

**JR** asked if there were water user facilities on this property.

**Dan** said there were not any to his knowledge.

**Ben** said that effects on water user facilities can be to adjacent properties as well. He noted that there was a lot of conflicting testimony on water impacts.

**Karen** asked if the Board evaluated effects on the six criteria with the proposed mitigation in mind.

**Dan** said he did and hoped the other Board members did too.

**JR** asked Karen if she was referring to the previous decisions on the variances or other mitigation.

**Karen** said she was referring both to those decisions and mitigation proposed by Staff.

**Ben** noted that there is a 68,000 volt power line that crosses this property and 12 lots were proposed underneath the line, which would be a minimum height of 35 feet above ground. He noted there could be potential safety risks if two-story houses under the line caught fire.



**Ryan** noted that the lots were expanded so the houses will not be built under the power line.

The vote was called; the Board voted (3-5) to deny the motion to deny the subdivision. The motion failed. (See Attachment P, Subdivision Vote Sheet #1)

**James** explained that the Board needs to make some kind of recommendation to the County Commissioners tonight.

**Lori** said that the Board needs to look at the proposal with all conditions proposed by Staff. She noted that Staff has recommended that the developer pay \$88,000 to MDT up front and many other conditions so the infrastructure will be completed up front. She asserted that Staff has tried to look at every issue and offer serious mitigation.

**Ben** explained that Staff lists a series of things in the memo that have not been mitigated in their opinion. He noted that Karen's recommendation was that the proposal should be denied.

**Lori** noted that regarding outstanding issues, Staff is recommending a donation to MDT of \$88,000 and the deletion of lots to preserve wildlife. She remarked that the Board denied the variance for an access through a platted subdivision, meaning the developer will have to improve another access. She also said that the developer has proposed a voluntary mitigation to the Sheriff's Office.

**Ben** noted that the Sheriff said the proposed mitigation will not solve the problem. He said that taxpayers have to solve the problem and it is not the fault of the subdivider. He noted that although the Board has recommended denial of several variances, the County Commissioners do not have to go along with the Board's recommendation. He said a lot of the subdivision's problems, especially the request for 33 phases over 20 years, has no solution at this point and he feels that they are on risky ground if they recommend approval with all the open questions. He read the decision options available to the Board.

**Gary** recommended a postponement so the Board could do more work before they send it to the County Commissioners. He noted that a private security firm is a possibility.

**Karen** explained that postponing the decision is an option, but the Board is running short on time. She noted that to go beyond this last regularly scheduled meeting, the developer has to consent to an extension. She also noted if the Board wanted to continue the meeting, they would need enough time to schedule another meeting and approve minutes from that meeting in order to give the County Commissioners time to make a decision.

**James** noted that within 10 days of the public hearing, the Board needs to make a written recommendation to the County Commissioners; Staff will need something to give to the County Commissioner or else the Board will need to have another meeting.

**Gary** asked Perry if he wanted an extension so the Board can have more time to deliberate.

**Nick** recapitulated that the areas Staff has identified for additional information include the flood hazard areas, the intersection at Eastside Highway and US Highway 93, wildlife, the Sheriff's Department, the school, the road connection to the south and the road design for Lower Woodchuck Road and Eight Mile Creek Road. He asked for a recommendation from the Board tonight.

**Gary** motioned to deny the subdivision based on the information they now have and without additional review time.

**Ben** seconded the motion.

**JR** asked what the Board's rationale is.

**Gary** said it was public health and safety.

**JR** asked if the Board was going to deny the motion first and then come up with rationale or reverse the order.

**Gary** said that a motion should have rationale behind denial, although it could be developed during discussion on the motion.

**Les** said that the Board has sufficient grounds for denial based on public health and safety. He stated that the County cannot become obligated to a situation that can result in disaster for taxpayers, namely, when law enforcement cannot respond to calls or traffic becomes dangerous. He also noted that the subdivision is not in the public interest.

**JR** said that the rationale for denial is based on fact that with the variance denials, it changes the presentation of this subdivision before the County.

The Board took a three-minute break to let the developer decide if he wanted to ask for an extension.

**Nick** asked for a recommendation from the Board at this meeting.

(1) Review of the Subdivision Proposal against the Six Criteria

1. Effects on agriculture, including effects on the agricultural sector, loss of agricultural ground and effects on surrounding agricultural activities or practices.

One Board Member agreed the effects were significant, six said they were non-significant, and one abstained.

2. Effects on Agricultural water-user facilities.

Three Board Members agreed the effects were significant, four said they were non-significant, and one abstained.

3. Effects on local services, including public road system, police and fire protection, utilities, and public schools.

Seven Board Members agreed the effects were significant. One Board Member abstained.

4. Effects on the natural environment, including ground water contamination, riparian/wetland areas, soil erosion, vegetation and air pollution, and noxious weeds.

Two Board Members agreed the effects were significant, five agreed the effects were non-significant and one abstained.

5. Effects on wildlife and wildlife habitat, including fisheries and mammals.

One Board Member agreed the effects were significant, six said they were non-significant, and one abstained.

6. Effects on public health and safety, including sanitary issues such as sewage disposal and ground water contamination, police and fire protection, wildland fire hazard, traffic safety and the presence of other known hazards (onsite and offsite) such as high-pressure natural gas lines, airports, railroads, overhead power lines, industrial activities, mining activities, irrigation ditches and defined dam inundation areas.

Three Board members agreed the effects were significant, four said they were non-significant and one abstained.

(See Attachment O, Subdivision Six Criteria Review Sheet)

(2) Board Decision on the Subdivision Proposal

The vote was called; the members voted (7-1) to deny the Subdivision. (See Attachment Q, Subdivision Vote Sheet #2)

**8. Close Public Hearing**

**9. Communications from Staff**

There was none.

**10. Communications from Public**

**Dan** did not ask for public comments.

**11. Communications from Board**

There was none.

**12. New Business**

There was none.

**13. Old Business**

There was none.

**14. Next Regularly Scheduled Meeting:** August 16 at 3:00 p.m.

Reynolds Lot 1B, AP (Edinger) Subsequent Minor – Public Hearing  
Sunnyside Orchards #4, Lot 8A (Price) Minor – Public Hearing

**15. Adjournment**

**Dan** adjourned the meeting at 11:39 p.m.



## REQUEST FOR COMMISSION ACTION

OG-06-08-936

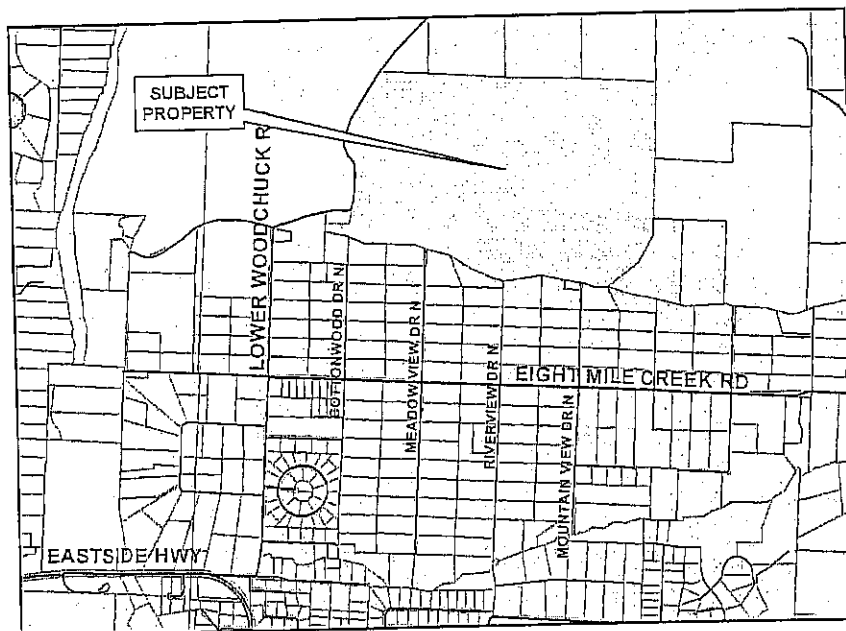
Site Visit: August 17, 2006 at 3:30 p.m.  
Meeting: August 22, 2006 at 6:00 p.m. at the Florence-Carlton High School  
Request: To act on the Aspen Springs Major Subdivision and Eight Variance Requests.

### I. ACTION REQUESTED

This is a request from the applicant, Wesmont Builders/Developers, Inc., represented by WGM Group, Inc., to approve the **Aspen Springs Major Subdivision and Eight Variance Requests**.

### II. BACKGROUND

Aspen Springs is a 643-lot (671 maximum units including condominiums) subdivision of approximately 392 acres located northeast of Florence off Lower Woodchuck Road near the border of Ravalli County with Missoula County. The project is proposed to be completed in 33 phases over 10 to 20 years. The proposed density at build-out is one unit per 0.58 acres and according to the application, the average lot size of the residential lots is 10,466 square feet or 0.24 acres. A total of 163 acres are proposed to be open space.



Map 1: Location Map  
(Source Data: Ravalli County Planning Department)

Aspen Springs offers higher density housing with planned community infrastructure and open space located relatively close to existing services. This development design is new to Ravalli County and while there could be many benefits with this kind of development, there are major issues that have not

been addressed. The Montana Department of Transportation (MDT) has identified impacts of Aspen Springs on the intersection of Eastside Highway with US Highway 93 that have not been mitigated, a road connection to the south of Aspen Springs to provide for efficient traffic flow is not proposed, impacts to important wildlife habitat identified by Montana Fish, Wildlife, and Parks (FWP) and the Ravalli County Sheriff's Office have not been mitigated. Staff's recommendation to the Planning Board was that no decision be made on the subdivision proposal until these issues were resolved and the proper infrastructure and services were in place to ensure this subdivision would have no negative impacts on the six review criteria. During the August 2, 2006 Planning Board Meeting, a member of the Planning Board requested that the developer work on resolving the outstanding issues and the developer's consultant respectfully requested that the Planning Board make a recommendation on the subdivision without any further information.

In conjunction with the subdivision proposal, the applicant is requesting the following eight variances:

1. For relief from Section 3-2-21 of the Ravalli County Subdivision Regulations, to allow the developer to complete the project in 33 phases over 22 years with a phasing plan instead of two phases to be completed within four years.
2. For relief from Section 5-4-4(d) of the Ravalli County Subdivision Regulations, which requires that roads in a new development connect to a right of way or easement in adjacent platted areas to allow for proper inter-neighborhood traffic flow.
3. For relief from Section 5-2-2(a)(13) of the Ravalli County Subdivision Regulations, to allow a no-build zone of 50 feet centered on the high pressure gas line traversing the property instead of a 200-foot no-build zone.
4. For relief from Section 5-2-2(b)(2) of the Ravalli County Subdivision Regulations, which requires that each lot has a building site of at least 7,500 square feet.
5. For relief from Section 5-2-2(a)(7) of the Ravalli County Subdivision Regulations, to allow for six flag lots.
6. For relief from Article Four of Chapter Five of the Ravalli County Subdivision Regulations, to allow the on-site roads to be reviewed under the new road standards, as amended August 4, 2005.
7. For relief from Article Four of Chapter Five of the Ravalli County Subdivision Regulations, to allow the developers to improve the graveled portion of Lower Woodchuck Road to meet the new road standards and to pay a portion of the cost to improve the paved portion of Lower Woodchuck Road to meet the new standards.
8. For relief from Section 5-4-5(b)(4) of the Ravalli County Subdivision Regulations, to allow the developer to pay a portion of the cost to improve the portion of Eight Mile Creek Road leading to the subdivision to meet the new standards.

*Staff recommended conditional approval of Variances #1, #3, #4, #6, and #7, approval of Variance #5, and denial of Variances #2 and #8. Staff recommended that no decision be made on the subdivision until the outstanding issues were resolved.*

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### III. PLANNING BOARD RECOMMENDATIONS

The Ravalli County Planning Board held a plat evaluation on June 7, 2006 and a public hearing on July 5, 2006 that was continued to July 12, 2006, July 17, 2006, July 24, 2006, and August 2, 2006. The Board took the actions outlined below at the Public Hearing on August 2, 2006.

#### **Variance #1 (to allow 33 phases over 20 years)**

1. The granting of the variance will not be substantially detrimental to the public health, safety, or general welfare or injurious to other adjoining properties. *One Board Member agreed and seven disagreed.*

2. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property. *Eight Board Members disagreed.*
3. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s). *Eight Board Members disagreed.*
4. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy. *Six Board Members agreed and two disagreed.*
5. The variance will not cause a substantial increase in public costs. *Eight Board Members disagreed.*

The Board made a motion to **deny** the variance request. **The Board voted 8-0 to approve this motion.**

**Variance #2 (from providing a road connection to The Riverview Orchards Subdivision to the south)**

The Board chose not to review the variance criteria beyond their discussion and the analysis in the staff report.

The Board made a motion to **deny** the variance request, based on the findings of fact and conclusions of law in the staff report. **The Board voted 7-1 to approve this motion.**

**Variance #3 (to allow a 50-foot wide no-build zone centered on the high pressure gas line)**

The Board chose not to review the variance criteria beyond their discussion and the analysis in the staff report.

The Board made a motion to **approve** the variance request, based on the findings of fact and conclusions of law in the staff report. **The Board voted 8-0 to approve this motion.**

**Variance #4 (to allow for lots with a building site area of less than 7,500 square feet)**

1. The granting of the variance will not be substantially detrimental to the public health, safety, or general welfare or injurious to other adjoining properties. *Six Board Members agreed and two disagreed.*
2. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property. *Five Board Members agreed and three disagreed.*
3. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s). *One Board Member agreed and seven disagreed.*
4. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy. *Seven Board Members agreed and one disagreed.*
5. The variance will not cause a substantial increase in public costs. *Five Board Members agreed and three disagreed.*

The Board made a motion to **approve** the variance request, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report. **The Board voted 6-2 to approve this motion.**

**Variance #5 (to allow six flag lots)**

The Board chose not to review the variance criteria beyond their discussion and the analysis in the staff report.

The Board made a motion to **approve** the variance request, based on the findings of fact and conclusions of law in the staff report. **The Board voted 8-0 to approve this motion.**

**Variance #6 (to allow on-site roads to be built to the County Standards, as amended August 4, 2005)**

The Board chose not to review the variance criteria beyond their discussion and analysis in the staff report.

The Board made a motion to **approve** the variance request, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report. **The Board voted 8-0 to approve this motion.**

**Variance #7 (to allow the gravel portion of Lower Woodchuck Road to be built to the County Standards, as amended August 4, 2005, and pay a portion of the cost to improve the paved portion of Lower Woodchuck Road)**

The Board chose not to review the variance criteria beyond their discussion and analysis in the staff report.

The Board made a motion to **approve** the variance request, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report. **The motion failed with a vote of 7-1.**

**Variance #7 and Variance #8 (to allow the developer to pay a portion of the cost to improve Eight Mile Creek Road from Eastside Highway to Lower Woodchuck Road instead of improving the road to meet County Standards)**

The Board decided to review Variances #7 and #8 together. The Board first made a motion to **deny** the request to allow the developer to pay a portion of the cost to improve the paved portion of Lower Woodchuck Road and the portion of Eight Mile Creek Road from Lower Woodchuck Road to Eastside Highway to meet the new road standards, based on the findings of fact and conclusions of law in the staff report. **The Board voted 8-0 to approve this motion.**

The Board then made a motion to **approve** the request to allow the developer to improve the portions of Lower Woodchuck Road and Eight Mile Creek Road leading to the subdivision to meet the County Standards, as amended August 4, 2005, based on the findings of fact and conclusions of law in the staff report, and subject to the conditions in the staff report, with a recommendation that a latecomer's agreement be allowed by the BCC, if possible. **The Board voted 8-0 to approve this motion.**

*(Staff Note: Since the developer did not request variances from meeting the old road standards for the paved portion of Lower Woodchuck Road and the portion of Eight Mile Creek Road leading to the subdivision, this motion can only apply to the gravel portion of Lower Woodchuck Road.)*

**Subdivision Proposal**

The Board made the following findings in their review of the subdivision proposal, including the mitigating conditions recommended by staff, against the subdivision review criteria:

1. Effects on agriculture, including effects on the agricultural sector, loss of agricultural ground and effects on surrounding agricultural activities or practices. *One Board Member found the effects were significant, six agreed the effects were non-significant and one abstained.*
2. Effects on Agricultural water-user facilities. *Three Board Members found the effects significant, four agreed the effects were non-significant and one abstained.*
3. Effects on local services, including public road system, police and fire protection, utilities, and public schools. *Seven Board Members found the effects were significant and one abstained.*



4. Effects on the natural environment, including ground water contamination, riparian/wetland areas, soil erosion, vegetation and air pollution, and noxious weeds. *Two Board Members found the effects significant, five members agreed the effects were non-significant and one abstained.*
5. Effects on wildlife and wildlife habitat, including fisheries and mammals. *One found the effects significant, six agreed the effects were non-significant, and one abstained.*
6. Effects on public health and safety, including sanitary issues such as sewage disposal and ground water contamination, police and fire protection, wildland fire hazard, traffic safety and the presence of other known hazards (onsite and offsite) such as high-pressure natural gas lines, airports, railroads, overhead power lines, industrial activities, mining activities, irrigation ditches and defined dam inundation areas. *Three members agreed the effects were significant, four members agreed the effects were non-significant, and one abstained.*

The Board made a motion to **deny** the Aspen Springs subdivision proposal, based primarily on the impacts of the subdivision on public health and safety and local services. **The motion failed with a vote of 3-5.**

One Board Member requested the subdivider take additional time to address the outstanding issues noted in the staff report and the Planning Board's discussion. The subdivider's representative responded with a request that the Planning Board make a recommendation on the proposal to the County Commissioners.

The Board made a motion to **deny** the Aspen Springs subdivision proposal, based primarily on the unmitigated impacts of the subdivision on public health and safety and local services. **The Board voted 7-1 to approve this motion.**

Comments from the meeting are contained in the record.

#### IV. PLANNING BOARD'S RECOMMENDED MOTIONS

(Note: Changes to staff's recommended motions are in underline/strikeout.)

#### VARIANCE REQUESTS

1. That the variance request from Section 3-2-21 of the Ravalli County Subdivision Regulations to allow the developer to complete the project in 33 phases over 22 years with a phasing plan instead of two phases to be completed within four years, be ~~approved~~ **denied**, based on the ~~findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report~~ review of the variance request against the five variance criteria.
2. That the variance request from Section 5-4-4(d) of the Ravalli County Subdivision Regulations, which requires that roads in a new development be connected to a right of way or easement in adjacent platted areas to allow for proper inter-neighborhood traffic flow, be **denied**, based on the findings of fact and conclusions of law in the staff report.
3. That the variance request from Section 5-2-2(a)(13) of the Ravalli County Subdivision Regulations to allow a no-build zone of 50 feet centered on the high pressure gas line traversing the property instead of a 200-foot no-build zone, be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.
4. That the variance request from Section 5-2-2(b)(2) of the Ravalli County Subdivision Regulations, which requires that each lot has a building site of at least 7,500 square feet, be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

5. That the variance request from Section 5-2-2(a)(7) of the Ravalli County Subdivision Regulations to allow for six flag lots, be **approved**, based on the findings of fact and conclusions of law in the staff report.
6. That the variance request from Article Four of Chapter Five of the Ravalli County Subdivision Regulations to allow the on-site roads to be reviewed under the new road standards, as amended August 4, 2005, be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.
7. *(Staff Note: The Board made two motions on Variance Requests #7 and #8 that varied from the exact language in Staff's recommended motions, but that resulted in the same recommendation. The result is that the developer would be required to improve the paved portion of Lower Woodchuck Road and the portion of Eight Mile Creek Road leading to the subdivision to meet the old road standards, unless variances are requested from the old road standards, so that both portions of the roads be reviewed under the new road standards. The developer would be allowed to improve the gravel portion of Lower Woodchuck Road leading to the subdivision to meet the new road standards.)*

That the variance request from Article Four of Chapter Five of the Ravalli County Subdivision Regulations to allow the developers to improve the graveled portion of Lower Woodchuck Road to meet the new road standards and ~~to pay a portion of the cost to improve the paved portion of Lower Woodchuck Road to meet the new standards~~, be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report, with a recommendation that a latecomer's agreement be allowed by the BCC, if possible.

8. That the variance request from Section 5-4-5(b)(4) of the Ravalli County Subdivision Regulations, ~~which requires that the portion of Eight Mile Creek Road leading to the property is improved to meet county standards to allow the developer to pay a portion of the cost to improve the portion of Eight Mile Creek Road and the paved portion of Lower Woodchuck Road leading to the subdivision to meet the new standards~~, be **denied**, based on the findings of fact and conclusions of law in the staff report.

#### SUBDIVISION PROPOSAL

That the Aspen Springs Major Subdivision be **denied**, based primarily on the unmitigated impacts of the subdivision on local services and public health and safety.

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#### V. PLANNING BOARD'S RECOMMENDED CONDITIONS

(Note: Changes to staff's recommended motions are in underline/~~strikeout~~.)

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments that will apply to the entire subdivision shall be included in the submittal of the final plat for the first phase to the Planning Department and filed with the final plat:

~~**Notification of Proximity to Agricultural Operations.** This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. (Effects on Agriculture)~~

~~**Notification of Storm Water Drainage Easements.** Within this subdivision there are storm water drainage easements. No structures may be placed within these easements that are not needed for storm water management. (Effects on Agricultural Water User Facilities, Local Services, and Natural Environment)~~

~~**Limitation of Access onto Lower Woodchuck Road.** A "no ingress/egress" restriction is located along the Lower Woodchuck Road frontage of the subdivision, excepting the approaches approved by the Ravalli County Road and Bridge Department, which precludes vehicular access onto this County-maintained road. This limitation of access may be lifted or amended with approval of the County. (Effects on Local Services and Public Health and Safety)~~

~~**Notification of Road Maintenance.** Ravalli County, the State of Montana, or any other governmental entity does not maintain the internal roads of Aspen Springs or the private road leading to the subdivision and therefore does not assume any liability for improper maintenance or the lack thereof. A Road Maintenance Agreement for Aspen Springs was filed with this subdivision and outlines what parties are responsible for maintenance and under what conditions. (Effects on Local Services and Public Health and Safety)~~

~~**Notification of Proximity to Natural Gas Supply Line, Easement and No-Build Zone.** An 8" diameter natural gas main supply line is buried within a 50-foot wide easement and traverses the western portion of Aspen Springs, as shown on the filed subdivision plat. The final subdivision plat identifies a 50-foot wide no-build zone, which applies to residential, commercial and/or industrial structures, centered on the gas line. Northwestern Energy has the authority and jurisdiction to install, operate and maintain the existing natural gas pipeline traversing this subdivision in accordance with the Department of Transportation's Code of Federal Regulations and the standards within the Gas Transmission Right-of-Way Development Provisions. For further information regarding the gas line, please contact the Northwestern Energy Company, 1140 South First Street, Hamilton, Montana, 59840, (406) 542-5970. (Effects on Public Health and Safety and Variance #3)~~

~~**Notification of No-Build/Alteration Zones.** Within this subdivision there are no-build/alteration zones on Lots E67, E68, and E196, as shown on the plat, to restrict building on slopes greater than 25%. No new structure, with the exception of fences, may be constructed in these areas and the vegetation shall remain in its natural condition. (Effects on Public Health and Safety)~~

~~**Notification of Severe Soils.** Within this subdivision there are areas of the property identified as potentially having soils rated as severe for roads and building construction. The approximate locations of these areas can be found on a reduced copy of the final plat and descriptions of the severe soils in question which are included as exhibits to this document. (The applicants shall include the exhibits as attachments) (Effects on Public Health and Safety)~~

2. Protective covenants for the entire Aspen Springs Subdivision shall be submitted with the final plat for the first phase that include the following provisions:

~~**Living with Wildlife.** (See Exhibit A-13 for the required provisions) (Effects on Agriculture and Wildlife and Wildlife Habitat)~~

~~**Waiver of Protest to Creation of RSID/SID.** Owners and their successors in interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community waste water treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. (Effects on Local Services and Public Health and Safety)~~

~~**Required Posting of County-Issued Addresses for Lots within this Subdivision.** The Florence Rural Fire District has adopted the Uniform Fire Code 901.4.4 which requires the lot owners to post County-issued addresses at the intersection of the driveway leading to the primary~~

~~residence and the road providing access to the lot as soon as construction on the residence begins. (Effects on Local Services and Effects on Public Health and Safety)~~

~~**Access Requirements for Lots within this Subdivision.** The Florence Rural Fire District has adopted the Uniform Fire Code. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 20', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck, approximately 40,000 lbs. to meet requirements of the Uniform Fire Code. Please contact the Florence Rural Fire District for further information on the requirements of the Florence Rural Fire District and/or the Uniform Fire Code. (Effects on Local Services and Effects on Public Health and Safety)~~

~~**Primary Heat Source.** The primary heat source for the newly constructed residences in this subdivision shall be at least 75% efficient. (Effects on Natural Environment)~~

~~**Control of Noxious Weeds.** Lot owners shall control the growth of noxious weeds on their respective lot(s). (Effects on Natural Environment)~~

~~**Lighting for New Construction.** Full cut-off lighting shall be required for any new construction within this subdivision. A full cut off fixture means fixtures, as installed, that are designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light emitted. The source of light is fully shielded; top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. Spotlighting of flag poles shall be permitted. (Effects on Public Health & Safety)~~

~~**Radon Exposure.** The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. (Effects on Public Health and Safety)~~

~~**Side Yard Setbacks.** To prevent the spread of fire, structures shall be set back a minimum of five feet from side yard property boundaries. (Variance #4)~~

~~**Amendment.** The covenants filed with the final plat shall state that written Governing Body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. (Effects on all six criteria)~~

~~3. A Beneficial Water Use Permit from the Department of Natural Resources (DNR) shall be submitted prior to the final plat approval of the first phase. (Effects on Agricultural Water User Facilities and Natural Environment)~~

~~4. The applicant shall submit \$88,182.00 to Ravalli County, which will be paid to MDT for improvements to the round about at the intersection of Eight Mile Creek Road with Eastside Highway, prior to the final plat for the first phase. (Effects on Local Services and Public Health and Safety)~~

~~5. The developer shall reconstruct Lower Woodchuck Road from Eight Mile Creek Road north to the last northern access of the subdivision to meet County Standards, as amended August 4, 2005. (Effects on Local Services and Public Health and Safety and Variance #7)~~

~~6. The Road Maintenance Agreement shall include the maintenance road leading to the water tank from Sweet Grass Hills Road. The Road Maintenance Agreement shall also state that the other parcels which may have beneficial use of the internal subdivision roads shall be allowed to join as~~

~~members of the agreement without the consent of the current members once connecting roads are developed within the easements. (Effects on Local Services and Public Health and Safety)~~

7. The applicant shall submit a letter from NorthWestern Energy (NWE) stating that the development, including street and utility crossings of the high pressure gas line and drainfields in close proximity to the gas line, will not pose a greater risk to public health and safety than what existed on the property prior to development and that the Right-of-Way Development Provisions have been signed by the developer prior to the final plat approval of the first phase. ~~(Effects on Public Health and Safety and Variance #3)~~
8. The applicant shall construct the proposed trails along Lower Woodchuck Road and a southern connection, as proposed, prior to the final plat approval of the first phase. ~~(Effects on Local Services)~~

### RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR EACH PHASE

9. The applicant shall provide for a 20-foot wide drainage easement centered on the natural drainage traversing the southeast portion of the property and Lot B227 on the final plat for Phase 26. The label for the drainage easement on the final plat shall state that no structures are allowed within the drainage easement unless they are required for stormwater management. ~~(Effects on Agricultural Water User Facilities and Natural Environment)~~
10. A no ingress/egress zone shall be placed along the Lower Woodchuck Road frontage of the subdivision, excepting the approaches approved by the Ravalli County Road and Bridge Department, on the final plat for any phases with Lower Woodchuck Road frontage. ~~(Effects on Local Services and Public Health and Safety)~~
11. The existing 60-foot wide private road and utility easement in the southeastern corner of Aspen Springs shall also be a conditional 60-foot wide public road and utility easement on the final plat of Phase 26 and a conditional 60-foot wide public road and utility easement shall be shown on the final plat connecting the proposed cul-de-sac of Ruby Court to the eastern property boundary of Aspen Springs on the final plat of Phase 28. The following statement shall be on the final plats in reference to these easements: "Development of the roads to meet County Standards within the public road and utility easements connecting this subdivision to the property to the east shall be the responsibility of the property owner(s) to the east. Furthermore, when these easements are developed and opened to the property(ies) to the east, those properties that have beneficial use of the easements shall be annexed into the road maintenance agreement for the internal subdivision roads." ~~(Effects on Local Services and Public Health and Safety)~~
12. Internal road easements shall be labeled as public road and utility easements on the final plat of each phase. ~~(Effects on Local Services)~~
13. Stop signs and road name signs, as proposed in the preliminary plat application, shall be installed and approved by the Ravalli County Road and Bridge Department for each phase. ~~(Effects on Local Services and Public Health and Safety)~~
14. The subdividers shall include an RSID/SID waiver in a notarized document filed with the subdivision plat of each phase that states the following: Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners and any successors in interest to any future RSID/SID, based on benefit, for a community wastewater system, community water system, or upgrading roads leading to or within the subdivision, including but not limited to paving, curbs and gutters, non-motorized transportation facilities, street widening, and drainage facilities. ~~(Effects on Local Services and Public Health and Safety)~~

- ~~15. The maintenance road leading to the water tank shall be constructed to have a minimum 12-foot wide compacted, gravel travel surface prior to the final plat of the phase in which the water tank is constructed. (Effects on Local Services and Public Health and Safety)~~
- ~~16. The applicant shall submit a letter or receipt from the Florence-Carlton School District stating that they have received an amount per lot (to be recommended by the Planning Board and approved by the Board of County Commissioners in consultation with the subdivider and the School District) for each phase to be submitted prior to the final plat approval of each phase. This contribution shall not be utilized for extension of capital facilities related to education. (Effects on Local Services)~~
- ~~17. The applicants shall meet the water supply requirements for the Florence Rural Fire District, which is a 1,000-gallon per minute water supply or a 2,500-gallon per lot water storage for each phase prior to the final plat approval of each phase. Alternatively, the applicants shall contribute \$500 per lot for each phase and/or a land donation, as approved by the Fire District, and provide a letter or receipt from the Florence Rural Fire District that the contribution has been made prior to the final plat approval of each phase. (Effects on Local Services & Public Health and Safety)~~
- ~~18. A 50-foot wide no-build zone centered on the high pressure gas line traversing the western portion of Aspen Springs shall be shown on the final plat of each phase, as applicable. (Effects on Public Health and Safety and Variance #3)~~
- ~~19. The applicant shall construct temporary turnarounds with a turning radius of 50 feet and a compacted all-weather travel surface that can accommodate emergency services vehicles for the internal roads prior to the final plat approval for each phase, unless a permanent cul-de-sac or through-road is constructed. (Effects on Public Health and Safety and Variance #1)~~
- ~~20. No build/alteration zones shall be shown on the slopes greater than 25% in Lots E67, E68, and E196 on the final plat of each applicable phase. (Effects on Public Health and Safety)~~
- ~~21. The subdividers shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision prior to the final plat approval of each phase. (Effects on Public Health and Safety)~~
- ~~22. The proposed phasing plan shall be accepted and any changes to the order and dates of filing shall be submitted as a revised phasing plan(s) to the Board of County Commissioners for review and approval prior to the final plat approval of each phase. (Variance #1)~~
- ~~23. Easements for infrastructure necessary for each phase shall be provided for on the final plat of each phase. (Variance #1)~~
- ~~24. Infrastructure necessary for each phase shall be completed prior to filing each phase even if it is not scheduled to be finished until a future phase. (Variance #1)~~
- ~~25. The applicant shall construct all internal roads to meet the County road standards, as amended August 4, 2005, with no design exceptions. (Variance #6)~~

**REMAINING ISSUES:** A southern road connection to provide for more than one route to the subdivision is not proposed and impacts on important elk habitat, as identified by FWP, the intersection of Eastside Highway and US Highway 93, and law

enforcement have not been mitigated. Also, mitigation on the impacts of Aspen Springs on the Florence-Carlton School District has not been negotiated.

**FISCAL IMPACT:**

Cannot be determined at this time.

**ATTACHMENTS:**

Application package (BCC already received)

Additional application materials

Original Staff Report (BCC already received)

Updated Staff Report (incorporating all changes made up to the Planning Board's recommendation on August 2, 2006)

Planning Board Meeting Minutes from the June 7, 2006 Plat Evaluation Meeting, July 5, 2006 Public Hearing and continued Public Hearings on July 12, 2006, July 17, 2006 July 24, 2006, and August 2, 2006.

Additional public comments received after the August 2, 2006 Planning Board Public Hearing

**STAFF:**

Renee Van Hoven, Benjamin Howell *RV BHF*

**DATE:**

August 10, 2006

**Ravalli County Board of County Commissioners  
Meeting Minutes for August 22, 2006  
6:00 p.m.**

**Florence-Carlton High School Gym, 5602 Old Highway 93, Florence, Montana**

**Public Meeting**

**Aspen Springs (Wesmont Builders/Developers, Inc.) Major Subdivision and Eight Variance Requests**

**1. Call to order**

**Commissioner Chilcott** called the meeting to order at 6:02 p.m.

**(A) BCC**

Greg Chilcott (Present)  
Betty Lund (Present)  
Alan Thompson (Present)

**(B) Staff**

Jennifer De Groot  
Benjamin Howell  
Karen Hughes  
James McCubbin  
Renee Van Hoven

**Commissioner Chilcott** led the audience in the Pledge of Allegiance and then discussed the general process of the meeting. Forty audience members indicated they wanted to comment.

**2. Public Comment on the Subdivision proposal and Eight Variance Requests**

**(A) Action on Time Limit Waiver Requests**

**Sarah McMillan** requested eight minutes to speak as the attorney for Bitterrooters for Planning and the Florence Coalition Against Aspen Springs.

**Commissioner Thompson** motioned to allow the proposed time.

**Commissioner Lund** seconded the motion.

The County Commissioners unanimously approved the motion. (See Attachment A, Sarah McMillan Three-Minute Waiver Request)

**Candace Jerke** requested six minutes to speak due to her expertise as an appraiser for the State of Montana.

**Commissioner Thompson** motioned to allow the proposed time.

**Commissioner Chilcott** seconded the motion.

The County Commissioners unanimously approved the motion. (See Attachment B, Candace Jerke Three-Minute Rule Waiver Request)

**Shaen McElravy** requested five minutes to speak.

**Commissioner Lund** motioned to allow the proposed time.

**Commissioner Chilcott** seconded the motion.



The County Commissioners unanimously approved the motion. (See Attachment C, Shaen McElravy Three-Minute Rule Waiver Request)

**Steve Hall** requested five minutes to speak due to his role as co-chair of Florence Coalition Against Aspen Springs.

**Commissioner Thompson** motioned to allow the proposed time.

**Commissioner Chilcott** seconded the motion.

The County Commissioners unanimously approved the motion. (See Attachment D, Steve Hall Three-Minute Rule Waiver Request)

**Cheryl Holden Rice** requested five minutes to speak as a historian.

**Commissioner Lund** motioned to allow the proposed time.

**Commissioner Thompson** seconded the motion.

The County Commissioners unanimously approved the motion. (See Attachment E, Cheryl Holden Rice Three-Minute Rule Waiver Request)

(B) Determination of Time Limits on Public Comment

**Commissioner Lund** noted that the combined time of expert testimony would take 30 minutes and motioned to allow two minutes each for other members of the public.

**Commissioner Thompson** seconded the motion. The County Commissioners unanimously approved the motion.

**Commissioner Thompson** thanked members of the public who submitted comments and those who addressed the subdivision and variance review criteria. He noted that the Planning Staff are public servants and the Planning Board receives no compensation for their efforts. He stated that the County Commissioners, the Planning Board, and Staff do not want to destroy the Valley. He said that one letter indicated someone in the County was paid off by the developer and asked that anyone with proof of bribery to contact the local authorities. He asked the crowd to act civilly.

3. **Staff Report of the Subdivision Proposal and Eight Variance Requests**

**Renee Van Hoven** gave a PowerPoint presentation. She gave an overview of the proposal compared to the six subdivision review criteria and listed recommendations from both Staff and the Planning Board. She stated that Staff has four outstanding issues that need to be addressed: the road connection to the south, relocation of 28 lots in the northeast of the subdivision, the identification and mitigation of impacts on the intersection of US Highway 93 and Eastside Highway, and mitigation of law enforcement. She described the variance requests and recommendations from Staff and the Planning Board. She entered the Staff Report into the record. (See Attachment F, Public Comments Received After the end of Planning Board Hearing Public Comment but Prior to the County Commissioner Meeting, Attachment G, Letter from William Ritchie, and Attachment H, Letter from Andy and Sarah Roubik)

4. **Public Comment on the Subdivision Proposal and Eight Variance Requests**

A) Developer Presentation

**Nick Kaufman**, WGM Group, Inc., noted that 77% of the County consists of public lands. He explained that one-acre tracts create sprawl without much infrastructure. He said that the Aspen Springs subdivision could have easily been one-acre tracts, but the developer

chose not to go that route. He commented that the other towns in the County are generally near agricultural and open land. He remarked that Aspen Springs can exist with this different pattern of development without diminishing existing agricultural parcels.

He claimed that Ravalli County generates 400 new households per year, 300 of them in the Florence-Carlton school district. He noted that Aspen Springs would create just 10% of the homes needed. He said that the median house price in Ravalli County is \$185,000, but the median income is \$40,000, which is not enough to afford the median house price. He noted that most of the property is on slopes less than 8% grade and there is very little slope restraint for constructing homes.

**Cam Stringer** said he is a hydrologist with Geomatrix. He noted that in order to receive water system permits, the applicant must receive water rights from DNRC. To do that, they must prove groundwater is physically and legally available and that there will be no adverse impacts on existing water right holders. He noted that for DEQ, the developer has to receive a permit for the public water supply system by demonstrating that there is adequate water supply available. He explained that there were test holes dug in 2005 and earlier in 2006. He said that the wells were tapping a deeper groundwater system than most in the Eight Mile area. He noted that today they did aquifer tests on one of the production wells. He noted that it has been pumping 400 gpm in (inaudible) No. 1 at Aspen Springs since 8:00 a.m. this morning. He showed a graph of drawdown projected over time. He also noted that they monitored pumping and observation wells in the area. He said the first well is a production well in the deep aquifer system. The second is a shallow observation well. The third was in the subdivision to the south, also in the shallow part of the aquifer. He said that in the pumping well, they saw about 71 feet of drawdown, which calculates out to about 84 feet of drawdown over 24 hours. He noted that the deep observation well 500 feet to the east experienced 10 feet of drawdown, which calculates out to about 14 feet over 24 hours. He said that another well about 450 feet northwest of the well had about 2/10 of a foot of drawdown, which will be about a half foot over 24 hours. He noted that the well south of the subdivision has not had any drawdown. He explained that transmissivity is a measure of aquifer productivity and said that about 2,000 square feet is available per day. He said that each production well can produce over 700 gpm. He concluded that adequate water is available and the most recent tests show that there is more water available than estimated previously. He also noted that the water is legally available and they will not have adverse impacts on senior groundwater right holders or senior water right holders.

**Ryan Salisbury** said that in layman's terms, there is adequate water available and information to prove it. He noted that the site does contain severe soils based on a NRCS soils survey, but after on-site investigations, the soil data collected to date shows they are not problematic. He noted that investigations on sewer and water issues were done prior to starting the project and DEQ submittals, which were made at the end of June last year. He showed an excerpt from a letter in which Sheryl Consort with DEQ noted that larger and more complex sites involve more deficiency letters. He said that final water and sewer design cannot be approved by state agencies until the preliminary plat is approved. He noted the qualifications of the AdvanTex wastewater treatment system the subdivision will use and noted that it uses three levels of treatment. He said there are individual septic tanks outside each home, which lead to a recirculation tank for secondary treatment, and finally end at community drainfields. He asserted that waste which goes through this process becomes cleaner than when treated through municipal systems.

**Nick Kaufman** noted that Renee asked the developer to mitigate wildlife. He said that Aspen Springs is five to six miles from crucial elk winter habitat and the subdivision is on the western edge of elk winter habitat. He noted that the Gunshy Ridge III subdivision was approved although it was further into the winter range than Aspen Springs is. He noted that early in the process, they hired Dr. Joe Elliot, who recommended preserving open ridges and timber draws on the property for wildlife; in the subdivision submittal, the timber draw was left open, as was the ridge. He noted there is no evidence of elk use on the site. He listed how many acres of the development were open space, roads, parks, etc. He noted that the developer proposed to enlarge a park in the southeastern area of the development. He noted that Staff supported phasing because it produces predictability, reduces burden on Staff, and allows future impacts to be evaluated at one time.

He explained that the phasing variance is critical and allows Staff to look at the land and see how it will develop. He noted that DEQ and the Ravalli County Environmental Health Department will review each final plat for sanitary restrictions. He noted that each phase will be able to stand alone. He said that the site is not zoned and it complies with the Growth Policy. He also stated that one review instead of 33 reduces public costs.

He said that for Variance 2, the developer is proposing an emergency gate with breakaway posts based on meetings where neighbors voiced concerns about additional traffic through their neighborhood. He noted that the roads to the south of the subdivision are only 40-feet wide and do not meet County Standards. He predicted that usage of these roads could result in detrimental impacts to public health and safety. He noted that Aspen Springs sits above the southern subdivision. He commented that this variance will not interfere with zoning or increase public costs. He noted that it is supported by David Ohnstad, who agrees that bringing the majority of traffic to the controlled intersection at Eight Mile Creek Road and Lower Woodchuck Road is a more appropriate solution than creating another access through Riverview Orchards. He explained that David Ohnstad also requested the provision of developing an emergency access through Mountain View Drive when the level of service reaches E.

He noted that he met twice with Sheriff Hoffman, but could not receive guidance for how to mitigate current impacts and Aspen Springs. He reiterated that the developer is proposing \$100 per lot to the Sheriff's Department and the Sheriff wrote a letter in response. He asked the Board for direction on how to mitigate the Sheriff's Department.

He said that Staff asked the developer to identify problems at the junction of US Highway 93 and Eastside Highway and mitigate them. He noted he had a difficult time receiving comments from MDT, but when he did, the director said there were no health or safety issues at that intersection. He asked the Board for guidance on what to mitigate. He concluded that the best thing it seemed to do was pay for a traffic study for that intersection. He also noted that Staff recommended removing 28 lots for wildlife. He said that leaving open space goes a longer way toward addressing and mitigating wildlife than removing some lots and leaving home sites on either side. He said that regarding a road connection to the south, the developer proposed an emergency access and the Road Superintendent agreed with the proposal.

**Ryan Salisbury** explained that the developer's original proposal was to pay a pro-rata share on a stretch of Eight Mile Creek Road because the proposed subdivision would only create 56% of the traffic on it. He noted that the Planning Board showed extreme interest in a latecomer's agreement. He commented that if an agreement can be reached, the

developer will improve portions of the paved portions of Lower Woodchuck Road and Eight Mile Creek Road to county standards. He noted that the developer has always proposed to bring the gravel section of Lower Woodchuck Road to County standards. He explained that the Planning Board recommended denial of the variance to use Mountain View Drive as an emergency access only. He noted that the road plans were reviewed by the County's reviewing engineer and he did not mention the need for another access. He stated that Lower Woodchuck Road is very efficient. He said that he sat down with David Ohnstad last week and he said that there is no need to have a road through Riverview Orchards as a primary access and agreed that an emergency barricade would be appropriate. He said there is no reason for the developer to improve Eight Mile Creek Road east to Mountain View Drive just because they will be utilizing an emergency access. He noted that Staff recommended a road connection to the south in the first phase, but if built that early, it would deteriorate due to lack of use. He explained that the developer's proposal is to construct the connection in Phase 21. He said that the reason there is no traffic study at US Highway 93 and Eastside Highway is because there is no safety hazard there, although there is one on the Eight Mile Creek curve. He noted that there will be impacts at US Highway 93 and Eastside Highway, but the developer has proposed mitigation with a traffic study and will pay his share of mitigation if there is a problem. He noted that MDT recognized Aspen Springs' impact on the roundabout and the developer has offered to pay about \$88,000 for its construction. He also noted that the developer will have to pay \$371,000 to bring Lower Woodchuck and Eight Mile Creek Road to county standards, per a cost estimate a year ago.

**John Tabaracci** said he submitted a letter to the Board and can answer any questions on legal issues. (See Attachment I, Letter from John Tabaracci)

**Nick Kaufman** discussed effects on local services and public health and safety. He noted that the County's own economic advisors said that 300 new homes were needed per year in the north end of the Valley, the very place that lacks ability for the Sheriff's protection. He noted that the developer offered \$300 per lot mitigation to the school system and \$100 per lot mitigation to the Sheriff's Department. He commented that the developer also offered to improve external roads subject to a latecomer's agreement. He noted that Aspen Springs provides only 10% of growth in the north end of the Valley per year. He said that the development team feels they have done as good a job as they can do and asked the Board to help them identify what else they can do to mitigate public services. He said that public health and safety issues such as water, sewer, and roads were addressed earlier and that the internal roads will meet AASHTO standards.

**Perry Ashby** said that there has been activism to limit lot size to one unit per two acres. He showed a PowerPoint slide with a scale drawing of Aspen Springs with 671 units on 392 acres and a grid with 671 dwelling units on 1,342 acres. He said that the alternative to Aspen Springs is a grid, although it is not good planning because the comparative land consumption is high. He said he has spent three years, money, and knowledge on this subdivision. He said that golf courses have embraced this concept for 75 years. He noted that instead of fairways, his subdivision will have open space. He said he is a pioneer, but his subdivision could be an exemplary land design.

**Commissioner Chilcott** noted one more expert witness request was submitted.

**Karen** clarified that the preliminary plat maps do not include minor adjustments made throughout the record. She noted that one change was the expansion of a public park.

**Chris Linkenhoker** requested six minutes to speak as an expert witness due to his experience in the USFS.

**Commissioner Thompson** motioned to allow the proposed time.

**Commissioner Lund** seconded the motion.

The County Commissioners unanimously approved the motion. (See Attachment J, Chris Linkenhoker Three-Minute Rule Waiver Request)

B) Members of the Public

**Sarah McMillan** said she is an attorney representing Bitterrooters for Planning and Florence Coalition Against Aspen Springs. She noted that the Board must act in the public interest. She asked the Board to take the recommendations of Staff and the Planning Board and deny the subdivision in part due to insufficient information. She noted that the Planning Board asked the developer for more time and information, but was refused, so they were forced to make their decision. She alleged that the process has been irregular and the County has failed to comply with laws and regulations. She said that there are two separate determinations for subdivision applications: one is completeness as defined in 76-3-604 (1)(a), MCA; the other regards sufficient information as defined in 76-3-604 (2)(a), MCA. She said that Staff has said the application does not have sufficient information and it should not have been passed on to the Planning Board. She said that the Planning Board should not have been put in a position to make a recommendation to the County Commissioners. She suggested that the sufficiency determination for this subdivision was never made. She also noted that the public was repeatedly instructed to keep their comments to the six subdivision criteria, but they should have been able to speak about all of Section 3-2-7, not just Section 3-2-7(a). She commented that public comment was closed and reopened multiple times, causing a problem for meaningful public participation. She said that the developer has touted this project as Smart Growth, but said that this project is the antithesis of Smart Growth. She noted that Smart Growth includes time, intention, and resources to restoring community vitality. She said that it should be transit and pedestrian-oriented with a mix of housing, commercial, and retail areas. She said that this development as large as a town does not have things available to other towns such as government, schools, hospitals, police, etc. She said that the Board can only approve the subdivision if it meets the standards in State Law and Subdivision Regulations and if it is in the public interest. She said that the intent of variances is for minor deviations when strict compliance to the regulations would cause undue hardship. She said that most variances applied for are to circumvent and subvert the intent and purposes of the regulations. She noted that FWP expressed concern with elk and mule deer winter range; she said someone in this audience has seen elk in that area. She said that there is a two-tier analysis to review variances. She noted that Section 8-1-3, says that the Board has to determine if an undue hardship is present and then review the variance by Section 8-1-7, which lists specific criteria. She said that this evening was the first time she heard an attempt by the developer to argue the six criteria. She noted that in the phasing request, the developer requested extra time to allow him an opportunity to react to the economic changes and Mr. Tabaracci noted that phasing lessens the impact of houses coming on the housing market. She noted that if 400 new houses are needed per year, there is hardly a housing glut.

**Candace Jerke** said she is an appraiser for the State of Montana. She agreed that there are about 400 homes built in Ravalli County every year. She noted, however, as she appraised Florence and part of Lone Rock, that the amount of new homes in that area has never exceeded 80, even in a busy year. She noted that there are a lot of vacant lots in the area, but there is not a need for 300 new homes unless people from people Missoula

move down. She estimated that a home would cost \$170,000. She noted that in the past few years, the state legislature has kept taxes down on most homes even though their values rise. She estimated that \$284,100 will go to the School District each year at full buildout. She said that the additional 534 students means the School District will need 21 new teachers, but that tax money will not cover the cost of a building or teachers. She also noted that other monies will only pay for ¼ of the cost of a Sheriff's deputy. She asked who would buy homes in Aspen Springs and said that they are not affordable housing. She noted that if the developer sold each lot for \$66,000, the gross earnings would be \$42 million and profits would equal \$24 million. She reported that in Aspen Springs, lots take up about 40% of the area, streets consume 17%, sewer systems use 12%, parks use 3%, and common areas take up 29%. She noted that some of the property has high grades, translating to higher building costs and more difficult maintenance. She predicted that there will be erosion problems. She asserted that soil samples had not been submitted. She said there are some areas in the subdivision that are decent for development, but the common areas were created because they were located in hard-to-develop areas. She noted that if there were 5,866 car trips per day divided by the 12 hours when people drive, that would equal 488 trips per hour, 40 trips per minute, and about one car every second.

**Shaen McElravy** said he is a Stevensville resident. He asked how many people wanted to preserve culture, privacy, and tax dollars by limiting subdivisions to one parcel per two acres. (Approximately 80% of the audience stood in agreement with his statement.) He asked the Board to unanimously deny the subdivision and noted that approximately 5,300 signatures were gathered to limit subdivisions. He said that even County Attorney George Corn said that we need emergency zoning. He said that thousands of people have said that the proposed subdivision is not in the public interest and the public wants to protect the rural lifestyle of two to ten acre tracts. He said that the subdivision does not meet the criteria of the Subdivision Regulations and the Subdivision and Platting Act. He remarked that the project's sewer permits were denied twice and the developer has failed to state proposed drainfields and provide soil samples at each drainfield. He stated that the developer has not yet obtained water permits from the DNRC. He said that costs associated with effects on local services will be passed on to taxpayers. He said that the development will be going against design and development standards. He noted that the developer has refused to pay for the roads. He said that the development is in the winter elk and mule deer range. He noted that the Sheriff said his office is overburdened and Eastside Highway cannot handle 5,000 extra cars a day. He said that Subdivision Regulations Section 8-1-11 only allows the County to grant a permit for a variance that expires 30 months after the date of approval or earlier unless the final plat is filed. He also noted that the County cannot grant a phasing variance. (See Attachment K, Letter from Shaen McElravy)

**Steve Hall** said he lives in Florence and was asked by one individual to tell the County Commissioners that the people are scared. He said that road safety is a huge issue, as is water degradation. He said that polluted water from the subdivision will affect the current water system. He said that the subdivision on which Aspen Springs is modeled is called Hidden Springs. He explained that Hidden Springs has about 1,400 homes on 1,600 acres, along with a charter school. He also noted that home prices in that subdivision start at \$300,000 to \$400,000. He said that the developer has had years to present a complete application, but the County Commissioners only have a few days to make a decision. He said that he spoke with someone at the Volunteer Fire Department who thought the developer was going to build them a new fire station. He noted that this subdivision does not have charter schools, expensive housing, or a new fire station. He said that this out-

of-state developer is trying to make a quick buck and costing the rest of the people a lot of money. He noted that the developer said that there is no problem at the junction of Eastside Highway and US Highway 93. He asked why the developer waited until the last minute to establish some sort of communication with MDT. He predicted that school safety and road safety will be a problem. He said he moved here for the elbow room, but now has fears about roads, water, and a connection road through an area without an adequate easement. He asked that the subdivision be placed next to infrastructure or US Highway 93.

**Cheryl Holden Rice** said she lives in Eagle Watch, but has roots in the Florence-Carlton area. She said that she has been interviewed twice so she considers herself a historian of the area. She said that the Bitterroot is a natural, cultural, historic community with a healthy, lasting foundation where impact matters. She said that this valley floor is four miles wide on one end and fifteen miles wide at the other, making it too limited to support mega subdivisions. She noted that the original Eagle Watch subdivision had covenants restricting one house per two acres. She said she paid \$42,000 in 1989 for a 4-bedroom house on 2 ½ acres. She noted that by 1995, had market value had risen to \$195,000. She invited the Board to drive through Eagle Watch or other neighborhoods with larger lots. She said that her ancestors have lived here for a long time and donated land to different religious, school, and civic organizations. She said the Sheriff's Department, Volunteer Fire Districts, and emergency services have strong hearts and giving hands that are full. She said that the Bitterroot River and its valley's quality of life is precious and at risk. She said that on October 4, 1891, the U. S. government ordered the Salish out of valley; the next day, their homes and farms went up for auction. She asked what kind of a legacy we will leave.

**Chris Linkenhoker** said he lives in Hamilton, was a former career employee with USFS, a professional forester certified in Washington and Montana, and a NEPA coordinator for timber sales in Oregon. He also noted that he was a regional analyst for fire recovery projects in Oregon. He explained that the National Environmental Policy Act (NEPA) passed in 1968 has been used by counties and municipal governments to protect projects from having huge negative environmental impacts. He noted that it is required for all federal projects and any other projects which use federal dollars. He suggested that the Board talk with their legal staff about NEPA. He said that NEPA requires analysis of direct, indirect, cumulative, long-term, and irretrievable impacts on the environment. He noted that over history, many projects ended up in environmental disaster years after implementation. He said that Aspen Springs is precedent setting in nature and will allow for exuberant movement of the developer. He noted that these indirect cumulative affects must be addressed and could have significant environmental impacts, which have not been analyzed despite great efforts by Staff. He said this decision is the most important valley decision made in the last 200 years. He noted that he has heard others say that nothing short of divine intervention can stop development. He countered that people can and do change the future. He told the Board that they need desired conditions for the valley's progress because currently, they do not have a large picture of where they want to go. He said that for hundreds of years, people in Flathead lived in this valley. He said that for the last 200 years, ancestors of those in this room lived in the valley and worked the land, dying with a vision for their children. He said that the Board does not have the right to violate a tremendous sacrifice by turning the valley into a concrete jungle or replica of Los Angeles, CA. He asked the Board to deny Aspen Springs.

The Board took a five-minute break.

**Alan Baumberger** said he lives off Eight Mile Creek Road and is concerned about another access through Mountain View Drive. He said those roads are private and the developer has not approached the homeowner's association in the area to discuss the matter. He said he recently called the Road Department and asked about dust control, stop signs, and patching roads where the developer wants to add more vehicles. He said that if this subdivision is approved, the developer will want to receive access through all the roads to the South. He noted that the County cannot even afford stop signs, much less the cost of maintaining these roads.

**Richard Uedel** said he lives in Florence. He noted that the valley is made up of many little towns, each with their own intricate personalities. He said he takes offense that people come in and can change a whole personality of our community. He said that if this subdivision is approved, the phrase "The Last Best Place" should be given to another state.

**John Carbin** said he lives on Eastside Highway and moved from Valley View. He noted that today's Ravalli Republic had an entire editorial page full of reading on Aspen Springs. He said that this difficult decision is a watershed for the future. He hoped that this decision will be one small step for Florence and a huge step for keeping Ravalli County unique and attractive. He said that during Renee's presentation, she used the phrase "non-significant" many times in reference to effects of the subdivision. He noted that an expert from the USFS used the word "cumulative." He noted that there will be cumulative effects from vehicles in Aspen Springs, Legacy Ranch, and the Daly subdivision. He said there were not any prior comments about air quality.

**Glenn Kinsley** said he lives south of Stevensville in Pine Lake Acres. He noted that the County's growth has historically been linked to agriculture, (inaudible), and commercial industries. He said that communities rose to service those needs but since the 1970s, Ravalli County has seen periods of rapid growth followed by stagnation. He noted that developments near towns should have more houses than developments in the sticks. He noted that growth in Ravalli County is not fueled by internal economic factors; growth in Missoula, on the internet, and in the economy contribute to Ravalli County. He noted that the County is a nice place to live and anything that takes away from it makes his property values go down. He said that dropping a community in on a bare parcel with no infrastructure makes no historic, economic, or aesthetic sense. He said that the County needs a better mechanism and a Growth Policy consistent for everyone. He noted that two acres per parcel is only an emergency voting measure.

**Pam Carlton** said she lives in Stevensville and travels Eastside Highway daily. She said there is a lack of information on air pollution that will be generated from the additional vehicles from Aspen Springs. She noted that there is currently a long wait at Eastside Highway and US Highway 93. She said that the only way for the Board to evaluate the effects the subdivision will have on public health and safety is that it will have negative effects. She also noted that the Board needs to analyze air quality during construction because homes will be covered with dust.

**Cheryl Harkin** said she lives in Florence and growth and traffic are inevitable. She noted that north of Florence, many subdivisions are being created. She remarked that Wesmont has offered \$2,000 for a traffic study at the intersection of Eastside Highway and US Highway 93. She noted that Florence has to take word of people who stand to benefit financially of this project. She said that the population of Ravalli County has increased 59% in the last 15 years; traffic accidents on US Highway 93 increased 61% over the last



15 years. She noted that traffic accidents on Eastside Highway increased 171% in the last 15 years. She said her statistics were from MDT. She noted that traffic accidents on US Highway 93 have been proportionate to growth, but accidents on Eastside Highway have been disproportionate. She noted that although the developer has offered money for a study, studies do not solve problems, just confirm their presence. She asked the Board to request studies and objective planning to find solutions. She asked the Board to plan for the future and not make mistakes today. (See Attachment L, Letter from Cheryl Harkin)

**Donald Morton** said he lives in Stevensville and supports Aspen Springs. He noted that most people talk like the subdivision will happen next year or next month, instead of taking planning into account so services and public safety are not adversely affected. He noted that 10, 20, and 30-lot subdivisions happen up and down Eastside Highway all the time. He noted that people are against the large subdivision, even though the houses are spread out over a long period. He said that the septic system will create 97% or 98% pure water. He also noted that the Ravalli Republic is locally owned.

**Lee Kierig** said he is an architect from Hamilton. He noted that the valley is bounded by two mountain ranges and this space can only support a sustainable community of so many people. He said it is unknown how many people this valley can support. He noted that although he is not opposed to this subdivision, it is a hard ring of others to come. He asked at what point the valley will be saturated and when we will deplete our natural resources.

**Jon Meredith** said he lives near Mountain Meadows in Florence and also works in the Florence area. He noted that Mountain Meadows was approved for 13 houses on 14 acres with 13 variances last year. (Staff Note: Mountain Meadows Addition Subdivision was approved for 32 lots on 23 acres. Five variance requests were also approved.) He compared the subdivision to a little Luna Vista. He noted that density was the only real problem neighbors had with Mountain Meadows, but developers and land use planners who "sold" them the subdivision said that cluster housing is fine along the US Highway 93 Corridor. He read what the developers told him: "Cluster housing should be allowed along the corridor and larger parcels should be the norm further out." He reiterated Steve Hall's comments that cluster development along US Highway 93 is one thing, but the Valley turning into the Denver and Colorado Springs area is something else altogether.

**Margaret Hammerberg** said that things occurring now may make an impact on the Board's decision on this subdivision. She noted that one large problem is traffic accidents. She noted that she lives in a subdivision and her home faces Eight Mile. She said that about three to four people per year come down into a ditch in her front yard. She noted that the last person came down into the ditch, took out part of an electric pole, came over her driveway, landed on the highway, threw debris in another ditch in her yard, and left the scene. She said it took an hour and a half for a state trooper to arrive and no one from the Sheriff's Department was available. She noted that the proposed roundabout will not affect what happens at her property.

**Sandie Frick** said she lives on 80 acres on Lower Woodchuck Road adjacent to Aspen Springs. She commented that the density is unacceptable for this area and water is not abundant. In fact, there are great possibilities of the water table lowering. She noted that the extra traffic is horrific. She remarked that schools are overcrowded and law enforcement is lacking. She stated that variances should not be allowed, but the subdivision should meet all requirements. She argued that Variance 1 should not be granted because the developer is trying to stick in the subdivision before rules change.

She said that Variance 2 should be put into effect for safety reasons. She noted that the gas line setback requested in Variance 3 is a public safety issue. She said that in Variances 7 and 8, the developer is requesting that the public bear the costs of creating the roads.

**Scott Bloom** said he lives in Stevensville and is a 25-year resident of the valley. He said that he is in the construction industry and supports responsible growth. He noted that others spoke about 5 and 10-acre parcel sprawl. He said that if this subdivision is approved, this will be the beginning of high-density sprawl. He compared the subdivision to a town and said its only government will be a Homeowner's Association. He predicted that the subdivision's impact on traffic will snarl and compound existing problems. He noted that the Sheriff testified that he cannot respond to the northern part of the valley. He explained that the subdivision scared the daylights out of the Florence-Carlton School District. He said that the subdivision "town" will consist of commuters traveling 50 miles to Missoula every day to work. He concluded that this subdivision can happen, but not in this location. He asked the Board to deny the subdivision due to its inappropriate location.

**Allison Kinney** (Some of her comments were inaudible.) She noted that a survey of needs assessment was produced by the Montana State Department of Health and Human Services. It identified risk and protection factors from elements in the community and positive or negative experiences coming from those factors. She reported that young people in Ravalli County, grades 8, 10, 12, have identified risks of transitions and mobility of 49%, 50% and 53 %. She said that children in Ravalli County use substances at a greater rate than other students in the nation. She noted that parents in Florence travel 25 minutes to work, 5 minutes longer than the natural mean time. She reported that the National Institute on Drug Abuse released statistics yesterday that Ravalli County is among the top 15 identified communities where alcohol dependence in persons aged 12 years old and older is an issue. (See Attachment M, Alcohol Dependence Among Persons Aged 12 or Older and Needs Assessment Drug Free Community)

**Sharon Schroeder** said she lives on Lower Woodchuck Road in Florence. She said she does not begrudge the developer for the money he stands to make, but said that growth needs to be directed and defined; it is directed by the Subdivision Regulations. She said she had concerns about Review Criteria 3 and 6 because they can be defined subjectively. She noted that the effects on the Florence-Carlton School District will be huge. She explained that if half of the households in Aspen Springs have two children, that would create 671 new students in the School District. She commented that \$300 is not an efficient mitigation fee. She noted that the Sheriff has not negotiated any kind of mitigation and since the north end of the valley is in the fringe, he is justified in saying that it is hard to provide adequate service. She asked the Board to consider Subdivision Regulations Section 3-2-7 (a) (3), which says that the subdivision should be in the public interest. She also noted that the Board may not permit a variance for lot size. She concluded that the subdivision is a good model in the wrong place.

**Grace Wilson** asked what kind of guarantee has been given that the housing in Aspen Springs will be affordable 10 to 15 years from now. She noted that the developer mentioned the septic system will be up kept with each phase, but that money for roads, schools, and police will not be paid up front. She asked who will be paying for those improvements up front. She hoped that the developer does not find out about adverse effects on present wells until too late; she asked who will foot bill to dig deeper wells if there are adverse effects. She said that the County cannot keep the current roads graded and does not know how they will be able to upkeep more roads. She asked how the

emergency barrier will be removed in a timely fashion during an emergency. She said that some things cannot be decided on fact alone; the way of life and values have to be considered as well.

**Kathleen Driscoll** said that although the County Commissioners spent time talking about impact fees, they have not implemented them. She noted that impact fees will cost the customer more money because the developer just passes the cost along. She also noted that the construction workers should receive higher pay. She said that all the other entities in the process make money, but asked where the taxpayer makes their money. She asserted that the Board has to go back to a simpler problem. She said that when studies come back from school districts, they need to put that into the whole organizational process and go back to basic facts.

**Marilyn Owns Medicine** said she lives off Ambrose Creek Road. She noted that many of the public have tried to understand how to participate in this process, but feel frustrated at this point. She noted that the public was told they could not talk about their concerns or the regulations. She said that although the County Commissioners are limited in what they can consider, the public needs an opportunity to voice their concerns. She said that earlier they discussed whether the rules allow approval of this subdivision. She said that this process is about protecting the participation and property rights of the public. She commented that this subdivision is not in the public interest. She asked the Board to interpret laws and decide about variances in the people's favor. She commented that the environmental assessment is not signed or accurate. She also noted that the developer said he submitted new information this morning on which the public could not comment.

**Gayl Knox** said she is from Corvallis and feels that someone from the outside is trying to take over the valley. She noted when people talk about effects on local services and public health and safety, she cannot help but think about the other countless developments that have already been approved. She noted that cumulatively, they create a lot of traffic and air pollution. She said that on the hill where she lives above the valley, she can smell air pollution when it is there. She noted concerns about adding trouble if this subdivision is approved. She asked the Board not to approve Aspen Springs or any other major subdivisions until they have a format for progressive planning so they do not make irretrievable decisions.

**Gary Haas** said he lives and works in Florence. He asked where the people will work and concluded that it will most likely not be in Missoula. He noted that when that much water is taken out of the ground, there will be sinkholes created and water is in limited supply. He argued that Montana does not have enough water to support jobs. He noted that some water from the Bitterroot River has been sold to other places and the DNRC is still trying to figure out who owns the water. He commented that Butte just spent \$5 million to upgrade its water supply for a macaroni plant. He noted that water is the lifeblood of Montana. He noted the developer said that groundwater would be recharged by the septic system, but he would not want to drink that water because effluent would be recharging the aquifer. He noted that the Sheriff cannot protect everyone in the County at the present time.

**LaRue Moorhouse** said she lives in Victor. She commented that Mr. Morton said the houses in Aspen Springs will take a long time to plan for and build. She noted that Mr. Morton has the next largest subdivision to go before the Board. She compared Aspen Springs to places in California such as Fresno, Irvine, and Orange County. She asked the Board to enforce the regulations and consider the true impacts on water quality and

quantity. She also listed issues with the school district, the Sheriff, and air quality. She noted that Smart Growth is about density near infrastructure. She expressed concerns that Aspen Springs will make Ravalli County an extension of Missoula County.

**Marcia Bloom** said she lives in the Lone Rock Area and the location of the subdivision is inappropriate. She noted that police protection should be crucial, but the Sheriff said his staff and budget are not adequate to protect the development. She noted that added traffic will be an inconvenience and danger to public health and safety. She noted that the Florence-Carlton Superintendent said an influx of new students from Aspen Springs will create a problem with overcrowding. She noted that winter range elk habitat will be impacted and the possible reduction of elk habitat should be crucial to the Board's decision. She explained that the infrastructure to support a development is non-existent and Smart Growth should be adjacent to an existing town, not in the middle of nowhere. She said that the proposed low-income housing is debatable, but noticed that gas prices to travel to Missoula would be inhibitive to living in the subdivision. She concluded that these items should be a no-vote. (See Attachment N, Public Comments from Marcia Bloom)

**Roger Linhart** said he supported the subdivision as mitigated by the Staff Report except for conclusions about elk habitat because he has not seen elk in the eastern part of the lot. He said that as far as low-income housing is concerned, that is what he does for a living and more is needed.

**Bill McSpadden** said he lives in Bitterroot Grand Estates. He noted that over the past 10 years, it has been more difficult and dangerous to get out onto Eastside Highway. He said that he has not heard about the Highway 93 traffic study, but he has lived in large cities and noted that as traffic increases, people are not as courteous. He said that many places have roundabouts to keep traffic continually moving. He said that will create a problem because there will be no gaps for people to pull out onto the Highway. He concluded that the roundabout might be more of a problem than a solution.

**John McGee** said he is the Superintendent of the Florence-Carlton School District. He explained that over the past year, the School District has been studying what growth is doing to its schools. He noted that in 1995, the school was overcrowded and they tried to deal with it by passing bonds. He said that today, the schools are still overcrowded and they asked for new funding. He noted that TischlerBise did a study to determine how growth affects the school. He noted that just to fund capital improvements, the cost would be \$10,418 per student. He explained that part of his job is to figure out how to fund new buildings. He asked if the schools should be funded by impact fees on new houses or asking developers to pay their fair share to help the district. He said he met with a developer this week who is offering \$5,000 per lot to the schools for mitigation and hoped that there are more people like that.

**Dave Curtiss** said he is the project manager of Aspen Springs and has 35 years of experience. He said that there have been 75 soil test sites dug and sent to DEQ. He also said that most of the people who testified this evening have already established roots and asked how their children and grandchildren will afford to live in the valley. He noted there was confusion about recharging the aquifer and said that on smaller tracts with both a well and a septic system, septic systems recharge those aquifers.

**Tracey Turk** said she is a water rights consultant in Stevensville. She noted there were multiple comments on water rights and water quality, but the state has agencies that use

stringent review criteria to analyze proposals. She explained that if the developer cannot meet those requirements, he will not receive a permit. She said that the current population in the valley is causing the widening of US Highway 93. She noted that Sunset Bench tracts were platted 100 years ago and people living there cause impacts to the community, as she did when she moved here with her son. She asked the Board to look at the overall picture and see that people are protected. She argued that regulatory agencies review subdivisions well enough.

**Christa Burns** said she lives in Florence and works for the Florence-Carlton Schools. She said she was concerned about the general welfare of the students at Florence-Carlton Schools. She stated that the School District is the most crowded school in the state of Montana by students per square foot. She noted that the District cannot even add 400 more students. She said that most families will need two incomes and have to work in Missoula to afford low-income housing. She asked where students will go after school until their parents come home and noted that there are no after-school programs for students. She concluded that there is a large impact to the school and community from subdivisions.

**Linda Cardenas** said she lives in the Lone Rock School area and recommended denial of the subdivision. She said that the applicant still has not mitigated public health and safety issues regarding traffic and law enforcement. She noted that the applicant has not obtained DEQ approval for wastewater treatment or a permit for their water supply system. She commented that the developer stated he thinks he has sufficient water for the subdivision's needs. She asked about the water needs of others in the area. She asked why the developer only started comp tests this morning. She said there was too much uncertainty to warrant gambling by allowing build-out over 20 to 30 years; she suggested that the developer bring through new phases every four years. She noted that the Board has a legal obligation to comply with the Subdivision Regulations and not circumvent or undermine them. She commented that the developer has not provided necessary facts to support legally granting any of the eight variances. She urged the Board to take a precautionary approach and deny the subdivision. (See Attachment O, Speaking Notes from Linda Cardenas)

**Nadine Wisniewski** said she is a child psychologist from Florence. She said her main concern is school overcrowding. She asked the Board to consider the school a fragile environment that requires adequate mitigation. She noted that even if \$300 is considered an appropriate donation in other communities, it is not appropriate in this school system due to its fragility. She said that in order to truly protect the school, mitigation will have to be greater. (See Attachment N, Letter from Nadine Wisniewski)

**Matthew Piedalue** said he lives off Ambrose Creek Road. He noted he was tired of hearing the developer say that only older people are opposed to the subdivision. He said he is a young person who want to own a home, but he would never buy a home in Aspen Springs. He said he wants to have faith in local government and asked the County Commissioners to listen to the people, look at all regulations, and only allow this subdivision if the developer has met every criterion.

**Robert Memmer** said he lives on Eastside Highway close to the proposed roundabout. He said he felt the developer has met all the criteria. He agreed that we will have problems with police protection and the schools, but those problems exist now. He noted that since three bond levies failed, there is not a proposed solution to the school. He

noted that the issue boils down to if the County Commissioners think the proposed mitigation is sufficient.

**Jim Rokosch** said he lives in Stevensville and noted that the six criteria for subdivision review are not the only subdivision review factors. He asked the Board to remember that the basis of the criteria is to determine if the subdivision is in the public interest. He asked the Board to see if the proposal meets existing regulations and is consistent with zoning and the Growth Policy. He said that the six criteria are useful mechanisms in considering impacts. He said he hoped the County Commissioners reviewed all the testimony and documentation presented to the Planning Board and noted that the process is inefficient. He noted that the true determination of agricultural water facilities is not before the Board because the state has not yet made that decision. He remarked that in a recent Supreme Court case, a decision was made that pre-stream capture impact on surface water and surface water right holders must be considered. He noted that surface water on the Bitterroot River has not been adjudicated. He recommended denial of the subdivision.

**Curtis Cook** said he is an attorney and lives in Hamilton. He noted that he opposes Aspen Springs and the proposed variances are almost ridiculous. He explained that variances are only supposed to be for a hardship or things peculiar to this subdivision. He also said that developers cannot use variances to affect lot size or density. He noted that the proposed phasing is not in line with phasing provided for in the Subdivision Regulations. He explained that issues with the school are not enough reason to deny the subdivision unless additional issues exist. He said that in this case, there are road problems, law enforcement problems, and other problems in addition to school problems. He noted that new matters were brought up tonight, including soil samples and well pumping information. He indicated that new information might require the subdivision to go back before the Planning Board.

**Scott Hollenbeck** said he is a realtor who has represented Perry Ashby for 11 years. He commented that Perry keeps his word and is honest and fair. He asked if the County was going to plan for growth or allow it by a patchwork of 10, 20, or 30 houses at a time. He noted that the TischierBise study reported that the County needs 300 new homes in this part of the valley; if the County does not approve affordable places, young people will go elsewhere or rent. He said that everyone deserves the ability to buy a home. He said that since this subdivision will be built out over 30+ years, it will not have nearly the impact of other subdivisions that are approved in this community and others.

**Lee Warring** said he has owned a ranch on Eastside Highway and US Highway 93 since 1960. He noted that since then, tremendous traffic problems have developed. He said that this project will push traffic over the edge. He contended that there is no way in the world that the intersection light in Florence could ever handle the oncoming traffic from this development or even other smaller developments. He noted that the County is not ready to build roads necessary to handle this situation. He commented that the developer will have to find a way around this light or Eastside Highway somehow because there is no way it can handle this traffic.

**Marina Weatherly** said she lives in Stevensville and helped to develop three different growth policies that were not adopted. She hypothesized that if the work had been done sooner, the Board would not be looking at this subdivision. She said that Aspen Springs is called Smart Growth, but is not. She said that if another subdivision of equal size is placed next to Aspen Springs, they will no longer have open space that they are trying to achieve. She suggested that the Planning Board educate developers wanting to do projects in the

Valley with what is appropriate and inappropriate. She said that the terms "low-income" and "affordable housing" have been tossed around, but they do not have the same meaning. She asked for whom these houses are affordable and noted that she can barely afford her home now, much less one in Aspen Springs. She said that there has been no demonstration of hardship for these variances except loss of financial gain.

**Debra Wetherelt** said she is a Registered Nurse who lives off Eight Mile Creek Road. She asked for assurance that there will be adequate emergency response time for police, fire, and health services.

**Susanna Pyron** said she lives in Florence and would not want to face this opposition if she wanted to do something with her land. She conceded that people are going to move to the valley and the County will have to face it. She noted that in Dry Gulch, there are many houses that do not have septic systems as sophisticated as the one proposed. She noted that cluster housing conserves natural resources like water and diminishes maintenance for the roads. She said the development will allow the community to put a neighborhood watch into place and use carpooling to mitigate traffic. She said that the junction at Eight Mile Creek Road and Eastside Highway is already being dealt with by MDT. She suggested that someday Eastside Highway will run all the way to Missoula.

**Cynthia Slaughter** said she moved to Florence from the state of Washington. She asked who carries the liability if there is a problem with the natural gas pipeline during or after construction. She noted an accident in Bellingham, WA, where children were killed and another more recent gas pipeline accident. She said that the types of inspections vary and the developer could only provide minimum inspections if he chose. She said that Sequim, WA, had to move an elk herd because a community grew around it.

**Harold Glass** said he lives in Stevensville and asked the Board to address the difference between what the School Board is requesting and what the developer has offered. He asked how the School District will fund new facilities. He noted that the \$100 donation per lot to the Sheriff's Department will not properly mitigate that situation. He noted that the proposed subdivision is far from ambulance and fire services. He proposed passing stricter laws and requiring payment from the developer up front.

**Matthew Taylor** said he is the President of the Eagle Watch Property Owner's Association and is the youngest resident in the oldest subdivision in the valley. He acknowledged that Perry Ashby built his home and he had good experience with him and with his house. He noted that regarding effects on the natural environment, recently someone in the Eagle Watch area had their well go dry. He said that one 24-hour test cannot predict results of decades down the road. He said regarding effects on public health and safety, as a consultant with the University of Montana's School of Education, he learned that the more crowded per square foot that a school is, the more bullying and violence occurs. He said that the people who live here are here to protect the valley – the way it was, is, and can be. He said that the County Commissioners hold the future in their hands. He conceded that Perry is a pioneer, but noted that pioneers can lead people astray. He asked the County Commissioners to vote for the future of this valley.

**Warren Kollman** said he used to live in Kent, Washington. He noted that the school district there was highly ranked. He said he had to force the Florence-Carlton School District to give his children a proper education. He noted that although he does not want someone telling him what to do with private property, he is concerned about the effects

multiple subdivisions will have on education. He said that the biggest export in Montana is kids.

**Will Zeil** said that other testimony tonight identified problems like the crime rate increasing, traffic increasing, and work load on schools increasing. He noted that there was never marvelous law enforcement or road maintenance in Florence. As far as protecting heritage, he said he cannot imagine a mother not being able to distribute her homestead if she desires. He asked that the Board give the subdivision approval if it meets the criteria. He said that the Board has to protect everyone's rights and the right of property ownership.

**Rod Israel** said he lives in Florence and is not in favor of Aspen Springs because of its proposed density. He noted concerns about water and drainfields. He asked if the County will plan for Ravalli County or if developers will plan the County in a piecemeal fashion.

C) Close Public Comment

**James** noted that the Board has received additional written comments this evening. He suggested that the Board take a break to review the comments before deliberating. He also suggested that the Board discuss if any of information presented tonight will be considered new information. He noted that the Board has to evaluate the new information presented to the County Commissioners since the Planning Board hearing and decide if it is new information and if it is relevant and credible. He recommended continuing the meeting until tomorrow so the Board can review all the comments. He noted that if the Board determines there is not new information, they can start their discussions; if there is new information, the subdivision will have to go back before the Planning Board.

**Commissioner Thompson** said that for the most part, the public handled themselves nicely. He moved to continue the meeting until 6:00 p.m. on Wednesday night at the Elections Room.

**Commissioner Lund** seconded the motion and asked if the facility will be large enough to accommodate everyone.

**Stuart Brandborg** asked if the Board will allow additional public comment on Wednesday.

**Commissioner Chilcott** said they will not because public comment is over.

The County Commissioners unanimously approved the motion to suspend the meeting.

**Candace Jerke** asked if Sarah McMillan can turn in extra information on Wednesday morning.

**Commissioner Chilcott** said she could not since public comment was over.

5. **Suspend Public Meeting**

6. **Adjournment**

**Commissioner Chilcott** adjourned the meeting at 9:44 p.m.



**Ravalli County Board of County Commissioners  
Meeting Minutes for August 23, 2006**

**6:00 p.m.**

**Judge Langton's Courtroom, Ravalli County Courthouse, 205 Bedford St., Hamilton,  
Montana**

**Continuation of Public Meeting**

**Aspen Springs (Wesmont Builders/Developers, Inc.) Major Subdivision and Eight Variance  
Requests**

**1. Call to order**

**Commissioner Chilcott** called the meeting to order at 6:02 p.m.

**(A) BCC**

Greg Chilcott (Present)  
Betty Lund (Present)  
Alan Thompson (Present)

**(B) Staff**

Jennifer De Groot  
Benjamin Howell  
Karen Hughes  
James McCubbin  
Renee Van Hoven

**Commissioner Chilcott** led the audience in the Pledge of Allegiance.

**2. Review of New Information Presented at the Public Meeting on August 22<sup>nd</sup>**

**(A) Staff Report on the New Information**

**Renee Van Hoven** explained what Staff considered new information not submitted or considered during the public hearing before the Planning Board. She noted that Staff recommends that the County Commissioners review the comments and decide a subsequent public hearing is required for the new information. (See Attachment A, Staff Memorandum Re: New Information on Aspen Springs)

**Commissioner Chilcott** asked the Board if there were any other relevant and credible pieces of new information that were not mentioned. The Board said there were not.

**James** said that the memorandum is Staff's take on what is new information and whether it is relevant or credible. He noted that he was involved in the analysis and agrees with the memorandum. He explained that the Board needs to determine if the items are new information, if they are relevant in consideration of the subdivision proposal in light of the review criteria, and whether the information is credible; if all are true, that information has to go back to the Planning Board for a subsequent public hearing, which will be limited to discussion and comments on the new information. He recommended that the Board accept public comment on whether there is new information and whether it is relevant and credible, but not on the subdivision itself.

**Commissioner Chilcott** reiterated the items which could be discussed as possible new information and asked the public for their comments.

(B) Public Comment on the New Information

**Chris Linkenhoker** said that he mentioned the relevancy of NEPA the previous night and that information was not included as part of the new information.

**Commissioner Chilcott** noted that NEPA is triggered by federal funding.

**James** explained that the comments were more argument than information and were not relevant to determination under state law. He noted he thought the issue is out of the Board's jurisdiction, but that it is fair for the Board to make that analysis.

**Chris Linkenhoker** noted that he has an associate who is a retired NEPA coordinator who could help solve the question if the subdivision will trigger NEPA. He restated that the argument is relevant and that the County has an issue with payments in lieu of taxes and some portions of its budget comes from federal funds. He noted that does not mean the project cannot proceed without an environmental impact statement, but said that the issue should be reviewed for significance.

**Nick Kaufman** from WGM Group asked where the school data came from and when it was received by Staff.

**Renee** said that the report was written on August 8, 2006, and submitted to the Planning Department last Wednesday, August 16, 2006.

**Commissioner Chilcott** noted that the report was referred to the previous night by John McGee.

**John Tabaracci** noted that the statute requires three tests to see if the information is new: it must be new information, credible, and relevant. He testified that the test well information was not new information because it simply confirmed earlier projections made at Planning Board hearings by Cam Stringer and Ryan Salisbury. He also questioned its relevancy because determinations on water and sewer will be made by the DNRC and DEQ. He said that the email from David Ohnstad to Ryan Salisbury confirms a position given by David Ohnstad in a previous email dated June 26, 2006. He argued that the traffic statistics given were not new information because multiple people testified on traffic safety issues. He said he agrees with Staff's analysis that comments about drug usage are not relevant to this subdivision. He said that neither the demographic data from the TischerBise study nor the comments by Christa Burns are new information because everyone knows the Florence-Carlton Schools are overcrowded. He said that the information is not relevant because both the study and Burns' comments were about improving capital facilities at the school and the County cannot assess money for capital facilities. He concurred with James that NEPA is outside the Board's jurisdiction.

**Candace Jerke** said that the comments from Christa Burns came from information the Florence-Carlton School came up with when they had a team look at what to charge for impact fees. She said that the developer's offer for \$2,000 for a traffic study at US Highway 93 and Eastside Highway was new to her and might be new information to the Board.

**Sarah McMillan** said she represents the Florence Coalition Against Aspen Springs and Bitterrooters for Planning and that last night, the developers submitted new information. She argued that the process is flawed.

**Commissioner Chilcott** noted that the Board is not considering the process at this time.

**Sarah McMillan** said that the developer should have to amend his application and that the public was not aware that the second County Commissioner meeting was not open for public comment.

**Commissioner Chilcott** asked Ms. McMillan to stick to the topic of new information and noted that the paper and the Commissioner's schedule advertised this meeting as a public meeting.

**John Tabaracci** noted that on July 12, 2006, his office wrote a letter to the Planning Board with an offer to pay \$2,000 toward a traffic study.

**Matt Taylor** said he works at the University of Montana's School of Education and does a number of grant projects and has a background in school safety and emergency management. He noted he also serves as a consultant for the US Department of Education. He said he cannot confirm earlier comments about the density of the Florence-Carlton School District, but noted that when he did on-site safety and vulnerability assessments of all schools in Ravalli County in the last two years and other schools in the west, the Florence-Carlton School District appeared to be one of the most densely populated schools. He noted that overcrowding has effects on student behavior and safety.

**Steve Hall** said that he spoke with John McGee, who told him that through their study, they found out that the density of the Florence-Carlton School has the greatest density of any school that size per square foot. He noted that the source is credible because it came from John McGee.

**Kevin Burns** said that Item 6 was determined by Staff to be irrelevant because it deals with impact fees and capital expansion. He said that the Drug Abuse Report coupled with school overcrowding creates a public health and safety issue. He said that the information is new, is credible and can be confirmed by OPI, and is relevant. He argued that overcrowding could lead to drug abuse, the Sheriff's Department has a slow response time to the area, and hazardous road conditions exist.

**Phil Taylor** said that some of the public have not seen the submitted information and asked in the event there is new evidence, if it could go back to the Planning Board for public comment on the new information.

**James** said that if the information meets all three criteria, there will be a new hearing on those items; if the items are not deemed new, credible, and relevant information, the Board can make a decision.

**Chris Linkenhoker** said he tried to reach Earl by phone but was unsuccessful. He said he respectfully disagrees with the ruling and directed legal staff to a book entitled Environmental Law by Mandelker. He noted that since 1968, there have been numerous cases involving use of federal funds and the trigger that brings in NEPA. He mentioned

the conclusion of these cases can be found in an article titled "Small Federal Handle Issues." He said that this is of major significance to this decision. He noted that his associate's opinion is that the threshold is quite low based on numerous court cases.

**Pam Merwyn** asked if anyone addressed impacts to air quality.

**Renee** noted it was brought up in previous hearings.

(C) Board Deliberation on the New Information

(i) Board discussion on the new information

1. Test well statistics submitted during the applicant's presentation at the BCC Meeting on August 22, 2006.

**Commissioner Thompson** said that when considering any subdivision on the east side of the valley, the Board needs to be conscious of the water table. He noted that until the previous night, he was not aware of drawdown tests and noted that his notes from the meeting conflicted with the slides provided by Cam Stringer. He said that with the addition of a second set of information, he does not know which to believe. He said the information appears to be credible and relevant and the public should have the right to comment on it. He said he was not happy that this information is new because he wanted the subdivision to be decided on quickly; he noted that both the Planning Board and Staff have devoted much time to this subdivision.

**Commissioner Lund** asked to see the Attorney General's opinion. She noted that although she is not an attorney, she believed that the Sanitarian had already reviewed the water application for compliance.

**James** noted that a paragraph in the opinion said that the County cannot wait until final plat to review the water supply.

**Theresa Blazicevich** said that Senate Bill 290 passed in 2005 makes that Attorney General's opinion void.

**James** said he agreed, but the statutory change did not come into effect until October 2005, so the County has to apply the law in place at the time the subdivision was submitted. He noted that even if the Senate Bill did apply, the information would still be relevant and could be passed on to DNRC and DEQ so the public would have time to comment on that information.

**Commissioner Chilcott** asked why the developer would take time to present information the previous night if it was not relevant. He noted that the developer agreed to limit the presentation to relevant data and that fact suggests its relevance. He stated that the information is credible, although after he discussed the matter with the Environmental Health Director, its credibility may be limited due to the short duration of the test. He concluded that the information was valid and accurate, and its relevancy was demonstrated by last night's presentation.

The Commissioners unanimously agreed that the information was new, credible, and relevant.

2. An email between David Ohnstad, Ravalli County Road Superintendent and Ryan Salisbury, WGM Group, Inc. dated August 17, 2006.

**Commissioner Lund** noted that John Tabaracci said this information had already been hashed over in an email dated June 26, 2006. She noted this information is confirmation of previously submitted information.

**Commissioner Thompson** said he believes the information is credible, but he is not sure if it is relevant because he already knew much of what had been said between WGM's engineers and David Ohnstad. He said he assumes the Planning Board has this same information.

**Commissioner Chilcott** said he does not remember seeing the information previously, but noted that the Board has had to wade through a mountain of paperwork.

**Renee** said Staff did receive that email dated June 26, 2006, but there was additional information in the newest email attached to John Tabaracci's letter. That information included an allowance to improve Mountain View Drive at a later phase and noted when the emergency access would be triggered due to the level of service.

**Commissioner Lund** said she has read the letter on June 21, 2006, but has not had time to compare them. She said that there is enough previous information that she feels the latest email is duplicated and the information is not new.

**Commissioner Thompson** said that there was much to read in a short time and they have hashed over the emergency exit variance multiple times. He noted that Renee is referring to a section in the email where the level of service on Lower Woodchuck Road is changed and the emergency access needs to be built. He said he was not sure he had read that particular item before.

**Ryan Salisbury** noted that Staff requested an emergency connection in Phase I, but the application had always listed its creation in Phase 21. He noted this is an ongoing issue and the Road Superintendent weighed in on a scientific way for the connection. He explained that the developers have been working on this issue from day one and he is concerned about how to proceed if the answer is not sorted out in the subdivision process.

**Commissioner Chilcott** said he would rather err on the side of caution. He said that the Board has already determined one new, relevant and credible issue and said he was leaning toward the cautious and conservative approach because he cannot remember all that he read. He said he considers it to be new information.

**Commissioner Thompson** said he has no problem with that interpretation if that is the situation.

**Commissioner Lund** said she yields to the Chairman and to caution. She also said they have hashed the issue and mentioned Ryan said the Board has not yet come up with an answer.

**Commissioner Chilcott** said he does not think the issue is new, but the date of the email is indicative that it might possibly be new.

The Commissioners unanimously agreed that the information was new, credible, and relevant.

3. Traffic statistics submitted by Cheryl Harkin at the BCC Meeting on August 22, 2006.

**Commissioner Chilcott** said that Staff noted its credibility because the statistics came from MDT.

**James** noted there was oral testimony as well.

**Commissioner Lund** noted that Ms. Harkin did not include a hard copy of the source in her letter.

**Karen** said it was a judgment call because Staff does not have the actual source or statistics from MDT.

**Commissioner Thompson** said he agreed with John Tabaracci that various people spoke about problems on the highway, but he never saw any definitive percentages or numbers until the previous night. He said the statistic that accidents on Eastside Highway increased 171% over the last 15 years is relevant because some of the main sticking points of the subdivision are public health and safety, air quality, and traffic on the roads. He noted that until the Board receives the statistics from MDT, the information is not credible; if or when they do, the information would be relevant and credible.

**Commissioner Lund** agreed that if a hard copy from MDT was presented, it would be relevant.

**Commissioner Chilcott** said he hates to challenge the credibility of any citizen, but for future precedence, if someone presents data from a government entity, an agency, or some source, it is prudent to have that information provided with the testimony. He noted that in future subdivisions, someone could say a fact that could send that subdivision back to the Planning Board and everyone will have to endure endless meetings and the costs of those meetings.

The Board agreed that the information is new, but the credibility of the statement cannot be ascertained without hard facts.

**Commissioner Thompson** said that the Board needs documentation to back up the statement.

**Commissioner Chilcott** asked James for any comments.

**James** said that the decision is well within the Board's discretion.

4. Information from the National Institute on Drug Abuse Report dated August 21, 2006 verbally submitted by Allison Kinney at the BCC Meeting on August 22, 2006.

**Commissioner Chilcott** said that the discussion the Board just had on Item 3 applies to Item 4 as well. He said that although the information appears credible, there is no evidence for it.

**Commissioner Lund** noted that although the statistic is tragic, it is not relevant because it had nothing to do with subdivisions.

**Commissioner Thompson** said that although he finds the information credible, he is uncomfortable correlating alcohol and drug abuse with subdivisions; therefore, he found it irrelevant.

The Commissioners unanimously concurred with Staff's recommendation that the information appears to be credible, but is not relevant.

5. Demographic Data within the Draft of Impact Fees to Fund Growth-Related Capital Improvements for the Florence-Carlton School District by TischlerBise dated August 8, 2006.

**Commissioner Thompson** said that Items 5 and 6 can be condensed into one discussion. He noted that Tischler was hired by the County to look at the feasibility of impact fees and school districts were offered the chance to follow-up on the issue. He noted that the TischlerBise study is credible. He said that the study shows the normal growth of the School District without specifically mentioning Aspen Springs. He said the report data shows an increase in enrollment up through 2012 and the figures are different from the ones that the developer provided. He concluded that the data is relevant and should be considered.

**Commissioner Lund** said she agrees with Commissioner Thompson, but noted the Board cannot judge a subdivision based on capital improvements. She said that the only new information is about student growth, but that has been discussed many times. She said that the report deals with construction of a new school and she is not sure the Board can consider that when deliberating on a subdivision.

**Commissioner Chilcott** said that the study seems like a capital consideration and under the regulations, cannot be considered. He noted that operation and maintenance costs can be considered.

**James** said that Montana law allows the Board to consider and require payment on a number of categories, but not for capital expansion for educational facilities. He noted that impact fees only deal only with capital facilities for education. He noted that the question is not about the conclusion of the report, but if some of the data is relevant to the subdivision.

**Commissioner Chilcott** asked if it was submitted through this process or referred to only during testimony.

**James** noted it was referred to the previous night by John McGee with the understanding that the Board received it as part of the information on the subdivision.

**Commissioner Chilcott** said that the TischlerBise report is credible, and new as of August 8, 2006, although the Board did not receive it until August 18, 2006. He noted that the Board is referring to the raw data in the report, not the conclusion.

**James** confirmed that the conclusion and purpose of the study is irrelevant, but the question is whether information within the study is relevant.

**Commissioner Thompson** stated that the information is relevant.

**Commissioner Lund** disagreed.

**Commissioner Chilcott** said the information was relevant.

The Board voted (2-1) to send the information back to the Planning Board.

6. Statement at the BCC Meeting on August 22, 2006 by Christa Burns that the Florence-Carlton School District has the most students per square foot in the state.

**Commissioner Chilcott** noted that the statistic was new, but it is common knowledge that the School District is overcrowded and no one has argued that conclusion. He said he did not believe it is significant enough to be considered new information.

**Commissioner Thompson** said that Item 6 can be rolled in with Item 5 because the TischlerBise study discusses the amount of square feet available per school per student. He noted that Ms. Burns did not provide evidence for her comments, but the TischlerBise report has that information and the Board could get OPI to find out the normal amount of square feet. He noted that if the Board gives the TischlerBise report to the Planning Board, they do not need to find the credibility of Ms. Burns or discuss capital facilities, which are not relevant.

**Commissioner Lund** noted that Ms. Burns' comment still referred to the number of students per square foot in the state, not just the number of students. She said the Board does not need to pass this information back to the Planning Board.

**Commissioner Chilcott** noted that there has been other testimony that the Florence-Carlton Schools are overcrowded, but asked if the new information was that the school was the most densely populated.

**James** noted that the new information is that the School District is the most crowded in the state, not solely that it is crowded. He asked if it makes a



difference to the Board if this School District is more crowded than those in other counties. He said that there is not much guidance on this new law, and the law does not state the new information has to be "significant."

**Commissioner Chilcott** said he again would like to err on the side of caution and send it back, although it is not relevant.

**Commissioner Lund** noted that Ms. Burns did not submit documentation with her statement and therefore, there is no proof it is true. She stated that the information is not new.

**Commissioner Thompson** said that the information is included in the TischlerBise report and once it is sent back to the Planning Board, the issue is taken care of. He noted that the information is not relevant or credible.

**Commissioner Chilcott** threw out Item 6.

7. Comment by Chris Linkenhoker on August 22, 2006, that the subdivision will trigger NEPA.

**James** noted that the comment was more in the form of an argument than information. He said it is not new information and is not relevant because he disagrees with the conclusion. He noted that he has not read the aforementioned book, but he does not see the connection between this proposed subdivision and NEPA.

**Commissioner Lund** said she defers to the County Attorney.

**Commissioner Thompson** said he did not understand how NEPA would apply or how the County would use federal funds to benefit this particular subdivision. He noted that the County does receive various federal funding, including PILT, a stabilization fund, and grants, but PILT is discretionary, the stabilization funds are for education and roads, and grant money must be specifically spent. He said he did not know how this information is relevant unless NEPA is somehow triggered.

**Commissioner Chilcott** said he did not see a nexus with NEPA in funding or with a private subdivision. He concluded that it is an argument, but it is not relevant.

**James** noted that the County does have subdivision fees that are designed to cover the approximate cost of processing subdivisions. He explained that those fees may or may not be accurate in covering costs.

**Commissioner Chilcott** concluded for the Board that Item 7 is not new information.

8. The developer's offer to pay \$2,000 toward a traffic study at the intersection of US Highway 93 and Eastside Highway.

**Commissioner Chilcott** read from the July 12, 2006, letter from John Tabaracci, in which Wesmont expressed willingness to pay about \$88,000

for the roundabout and \$2,000 to MDT for a traffic study. He concluded that the information is not new.

**Commissioner Lund** agreed.

**Commissioner Chilcott** threw out Item 8.

(ii) Board action on the new information

**Commissioner Thompson** motioned to remand the Aspen Springs subdivision back to the Planning Board under the three specific areas of new information: test wells, an email from David Ohnstad to Ryan Salisbury, and the demographic data in the TischerBise report, for their consideration and public hearing.

**Commissioner Lund** seconded the motion.

The Board unanimously approved the motion.

**James** noted that under Montana Code Annotated, the Planning Board has 45 days from today to hold a hearing on that information and the 60-day time limit on the subdivision is suspended. He said that Staff will pursue scheduling and noticing for the hearing. He said that after the Planning Board hearing, the County Commissioners will have about two weeks for their decision.

**Commissioner Chilcott** expressed that he had wanted to decide on the subdivision tonight and asked if the Board's deliberation on variance requests was suspended as well.

**James** said that was his recommendation. He noted that there was enough new information that would be hard to separate it out to make sure the decision would not be based on it. He said that if the Board decided something that could be affected by public comment, they would ignore public comment. He suggested waiting on deliberations and noted that if the Board has one or more variances they feel confident will not be affected, they can go ahead, but that is not the conservative approach.

**Commissioner Chilcott** said that the phasing variance and funding could be tied with the TischlerBise study, but noted that the natural gas pipeline variance is separate.

**Commissioner Lund** agreed that the pipeline would not be affected. She asked if flag lots or the size of lots would be affected by the new information. She also noted that the internal road standards would not be affected, but the external road variance requests would be.

**James** said that the Board could go ahead with variances that were tied to a change in the regulations and the flag lot variance. He noted that the size of lots could be affected by demographics and that if there was any chance that the decision could be affected by new information, it should not be pursued this evening.

**Commissioner Thompson** said that he would like to collect all the information before making a decision. He said he was not comfortable making decisions on specific variances and then coming back to make more decisions later.

### 3. Adjournment

**Commissioner Lund** agreed and moved to adjourn the meeting until further notice.

**Commissioner Chilcott** seconded the motion and the meeting was adjourned at 7:27 p.m.

